S. HRG. 117–909

CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

OCTOBER 6, 2021

Serial No. J–117–8

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CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

WEDNESDAY, OCTOBER 6, 2021

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

The Committee met, pursuant to notice, at 10:02 a.m., in Room 226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

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

Also present: Senators Peters and Stabenow.

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

Chair DURBIN. Good morning. This hearing will come to order. Today we'll hear from five judicial nominees, and one nominee to the Department of Justice: Judge Lucy Koh, nominated to the ninth circuit; Judge Jane Beckering, nominated to the Western District of Michigan; Judge Shalina Kumar, nominated to the Eastern District of Michigan; Armando Bonilla, nominated to the Court of Federal Claims; Carolyn Lerner, nominated to the Court of Federal Claims; and Jonathan Kanter, nominated to serve as Assistant Attorney General for the Justice Department's Antitrust Division.

I have the privilege of introducing Mr. Bonilla and Ms. Lerner, and we're also joined by a number of our colleagues who will introduce the other four nominees.

Before I proceed to my introductions, I would like to make a few brief comments.

First, the nominees before us are all, every one, exceptionally well qualified. They include a sitting Federal district court judge with 14 years of experience on the bench, two State court judges with three decades of judicial experience between them, a former Senate-confirmed Government watchdog who saved taxpayers hundreds of millions of dollars by investigating and rooting out waste, fraud, and abuse in the Federal Government, a nominee who has litigated more than 100 cases before the Court of Federal Claims, the court to which he's nominated, and one of the country's foremost experts on antitrust law.

Second, these five judicial nominees will bring incredible professional and demographic diversity to the justice—administration of justice. Judge Koh, for instance, would be the first Korean-American woman to sit on a Federal appeals court. Judge Kumar, the

first Federal judge of South Asian descent to sit on a district court in Michigan. Mr. Bonilla, the first ever Latino judge on the Court of Federal Claims.

Further, in addition to their judicial experience, the nominees before us have worked as plaintiffs, attorneys, civil litigators for the Government, criminal prosecutors, and mediators. I want to commend the Biden administration and my colleagues for continuing this important efforts to balance our courts with outstanding nominees, nominees who understand the role of a judge, whose credentials are second to none, and are ready to hit the ground running.

Now, let me turn to my introductions. Armando Bonilla is currently the vice president for ethics and investigations at Capital One Financial Corporation. He's worked there since 2018. Before that, Mr. Bonilla served with the Justice Department for 24 years, 1994 to 2018. From 2017 to 2018, he served as Associate General Counsel of the United States Marshals Service, giving advice on legal, ethical, contractual, legislative, and policy issues. From 2010 to 2017, he served in the Office of Deputy Attorney General. As an Associate Deputy Attorney General, he advised the Office on a wide variety of issues.

He also previously served as a trial attorney, both in the Criminal and Civil Division of the Justice Department. While in the Civil Division, Mr. Bonilla litigated over 100 cases before the Court of Federal Claims. He handled over 50 appeals.

I will also note that Mr. Bonilla has been before this Committee previously, nominated by President Obama to be a judge on the Court of Federal Claims in 2014. This Committee twice advanced his nomination by voice votes. That bipartisan support for Mr. Bonilla was well deserved considering his multiple decades of public service.

Also before the Committee today is Carolyn Lerner, likewise nominated to serve on the Court of Federal Claims. She graduated from the University of Michigan, I'm sure good news to the two colleagues who have joined us at the table, and New York University School of Law.

Ms. Lerner spent almost two decades in private practice, representing employees in employment discrimination and civil rights cases. While in private practice, she was appointed by a DC district court judge to serve as Special Inspector for Sexual Harassment and Retaliation at the D.C. Department of Corrections.

In 2011, President Obama nominated her to head the Office of Special Counsel, a position to which she was confirmed by voice vote here in the Senate. In this position, Ms. Lerner investigated allegations of waste, fraud, and abuse in the Federal Government, and protected whistleblowers from reprisal. When Ms. Lerner was nominated to serve a second term as Special Counsel, she had the strong support of Ranking Member Grassley, who wrote that she had, quote, "Built trust and confidence on both sides of the aisle in her ability to objectively and diligently pursue the Office's mission."

Since 2017, she has served as a chief circuit mediator of the DC circuit, personally mediating approximately 10 cases each year.

I'm going to ask that two statements be placed in the record at this point: one is from Senator Warren relating to the nomination

of Mr. Kanter, who will be introduced formally later. And the other is by Senator Cardin on behalf of one of his constituents, Carolyn Lerner. Without objection, they will be entered.

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

Chair DURBIN. Let me now turn to my Republican colleague, Senator Grassley.

Senator GRASSLEY. Are you ready for me?

Chair DURBIN. I'm ready for you.

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

Senator GRASSLEY. Judge Koh is well known for her opinions and high-profile cases involving tech companies, antitrust, and data privacy. She has also had major opinions bearing on religious liberty and constitutional rights.

I want to discuss some of those more in depth today, and also hear more about Judge Koh's judicial philosophy. Some of this administration's nominees have been a bit cagey when it comes to their views on constitutional and statutory interpretations. Given her time on the bench, I think Judge Koh will be able to speak about her judicial philosophy very fully.

The Michigan nominees are both sitting judges, which is good, but their prior experiences are also pretty similar, plaintiff's attorneys with long histories of donating to Democrats. While there's nothing wrong with plaintiffs' lawyers or anybody that wants to donate to any political party, including the Democrats, we should make sure that these nominees are willing to be even-handed on the Federal bench.

As to the claims nominees, Mr. Bonilla seems experienced before this specialized court. Ms. Lerner is someone my staff has worked with well over the years from her time as special counsel in the Office of Special Counsel.

Mr. Kanter and I met last week, and we had a very good discussion about my concerns about concentration and consolidation in the agricultural industry. I hope that we'll have a chance to continue that conversation today. Mr. Kanter has been a forceful critic of Big Tech companies. So have I. The market size and power of companies like Facebook and Google enable them to exert substantial control over how Americans get and share information. Evidence suggests that these technology companies frequently censor conservative political viewpoints or search results from their platforms. And, as we heard from whistleblower testimony yesterday in another Committee, social media companies like Facebook have prioritized profit and power over even the well-being of our children. I look forward to hearing Mr. Kanter's thoughts on how he plans to use antitrust laws to protect the American people against these types of unfair practices.

I welcome all of our guests.

Chair DURBIN. Thanks, Senator Grassley. We have a number of colleagues joining us this morning to introduce some of the nominees, and I want to note that we will go a bit out of order in these introductions so we can accommodate their conflicts in scheduling.

I understand Senator Padilla will start with the introduction of Judge Koh.

OPENING STATEMENT OF HON. ALEX PADILLA, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator PADILLA. Thank you, Mr. Chair, and Ranking Member Grassley. It's my honor to introduce to the Committee, Judge Lucy Koh from the great State of California, as President Biden's nominee to serve on the U.S. Court of Appeals for the Ninth Circuit.

Judge Koh is joined here today by her family. Her husband, Tino Cuellar, daughter, Rhea, and son, Mateo. I think they're proud of mom. So proud they took red-eye flights just to make sure they were here today. She's also joined by her mother, her brother, and several other members of her extended family, and I had an opportunity to welcome each one of them and thank them for sharing Judge Koh with us in public service.

In many ways, Judge Koh's story epitomizes the American Dream. She is the daughter of Korean immigrants who fled communism and dictatorship in search of a better life. Judge Koh was born here in Washington, DC, and raised in Vicksburg, Mississippi. Her experiences there in public schools, challenged with poverty and discrimination, along with the experiences of working in her father's small business, surrounded by love and lessons of her immigrant family helped shape this unique and necessary perspective that she now brings to the Federal bench.

Judge Koh worked her way through Radcliffe College and Harvard Law School and began her career—her legal career right here on this Committee as a Women's Law and Public Policy Fellow. Judge Koh went on to build a career as a trailblazing public servant and an outstanding legal thinker. She spent 7 years as a lawyer for the United States Department of Justice, earning numerous accolades for her work there, including an FBI award for excellence in prosecuting major fraud.

Judge Koh then found her way to Silicon Valley, where she made a name for herself as an expert litigator of intellectual property cases. Her good work and reputation extended far and wide. And in 2008, Governor Arnold Schwarzenegger, a Republican, appointed her to the Superior Court in California. Just 2 years later, President Barack Obama nominated Judge Koh to the Federal district court bench. She was confirmed unanimously, Mr. Chair, unanimously by 97 Members of this Senate, including Members who serve on this Committee today. In the decade since, Judge Koh has gone on to distinguish herself as jurist, issuing over 3,200 opinions and presiding over more than 270 trials.

She is well known not only in her district, but across the country as talented, thoughtful, smart, and fair. In 2016, this Committee, including Ranking Member Grassley and Senator Graham, voted 13-to-7 in support of Judge Koh's nomination to the ninth circuit. Unfortunately, Judge Koh's nomination never received a floor vote in the Senate. So I hope that we seize this opportunity to elevate Judge Koh to the ninth circuit and do so once again with strong bipartisan support.

If confirmed, Judge Koh will become the first Korean American to serve on a Federal circuit court. The historic nature of this nomination reflects our commitment to rebuild our Federal judiciary in a way that better reflects the America that it serves. And it also

is a representation of Judge Koh's great talent, intellect, and skill that the President has entrusted her with this milestone.

Judge Koh, I look forward to hearing from you today. I want to thank you again for your willingness to continue to serve our great Nation. And colleagues, I will be urging your support of her confirmation.

Chair DURBIN. Thank you, Senator Padilla. Before turning to our visiting colleagues, I'll ask Senator Feinstein if she would like to make a comment.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thanks very much, Mr. Chairman. I would like to add my words of support for Lucy Koh to serve as judge of the United States Court of Appeals.

She has been a highly respected member of the Federal judiciary, and she served California well throughout her career. I recommended Judge Koh when she was first nominated to the ninth circuit by President Obama in 2016, and I'm pleased that President Biden chose her as one of his first nominees to the appellate court.

She received her undergraduate degree from Harvard in 1990, her law degree from Harvard Law in 1993, and she has served as a Legal fellow of this Committee's Immigration Subcommittee, and then served several years at the Justice Department. In 1997, she moved to California to serve as assistant U.S. attorney in the central district. Among her achievements while at Justice, Judge Koh received an award from the FBI for, quote, "Demonstrated excellence in prosecuting major fraud cases," end quote.

After her time with Justice, Judge Koh spent nearly a decade in private practice in Palo Alto. She became a distinguished intellectual property lawyer, working on patent, trade secrets, and commercial civil litigation. She was appointed by a Republican Governor, Governor Schwarzenegger, to serve as a judge of the California Superior Court for Santa Clara County. That's quite a good achievement.

In 2010, the Senate voted unanimously, 90-to-0, to confirm Judge Koh as a Federal District Court Judge for the Northern District of California. And she has served on that court for more than a decade. She issued more than 3,000 written opinions, and her reversal rate is very low; it's 1.3 percent on all those decisions. And it speaks to the care in her research, analysis, and jurisprudence.

She was nominated in February for a seat on the ninth circuit. Following a hearing of her nomination, Judge Koh received the support of several of our Republican colleagues on this Committee. But her nomination, for some reason, was not considered by the full Senate. In the intervening 5 years, Judge Koh has gained additional experience and built a significant record as a Federal judge. And I hope that my colleagues on both sides of the aisle will again support her nomination to the ninth.

She has excelled in every position she has had. She has an impeccable track record as a prosecutor, in private practice, and as both a State and Federal judge. Judge Koh would be an excellent addition to the ninth circuit.

So, I'm pleased, once again, to be able to say a few words and introduce her to the Committee. And I thank the Chair for holding this hearing today.

Chair DURBIN. Thank you, Senator Feinstein. And now we'll turn to the comments on the second panel. And first up will be the two Senators from Michigan. It's my understanding that Senator Peters has a Committee waiting for him. If Senator Stabenow will defer to her colleague, I'll recognize Senator Peters.

STATEMENT OF HON. GARY C. PETERS,
A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator PETERS. Well, thank you, Chairman Durbin, for that. And Senator Stabenow, thank you for the deferral for the markup for the Committee for which I Chair, so thank you for letting me go forward.

I certainly thank you for having this hearing, and Ranking Member Grassley, thank you for bringing us all together today. It is my pleasure to introduce two extemporary Michiganders and nominees for the Federal bench. Judge Shalina Kumar for the U.S. District Court for the Eastern District of Michigan, and Judge Jane Beckering for the U.S. District Court of the Western District of Michigan.

I want to take a moment to acknowledge their families and friends who are here with us today. Judge Beckering is joined by her husband, Raymond, and three children, Marley, Katie, and Ray, as well as her parents, John and Sheila Buchanan, and her older brother, Robert. Judge Kumar is joined also by her close friends, Jason Turkish and Eve Hill. Thanks each of them to be here with Judge Kumar.

It is critical that we have qualified, fair, and impartial judges committed to upholding our laws and administering justice in Michigan and across the country. Senator Stabenow and I were proud to recommend both of these fine judges to President Biden.

As a native of Southeast Michigan, I'll begin introducing Judge Kumar, our nominee for the Eastern District. Judge Kumar is highly qualified with nearly 25 years of legal experience and private practice, and since 2007 on the Oakland County Circuit Court. In 2018, she was appointed chief judge of the court by the Michigan Supreme Court. And by all accounts, she has shined in this role, demonstrating effective and thoughtful public service, even amidst the challenges brought on by COVID. She has presided over a robust docket of civil and criminal cases while also leading the administration of the circuit, which has 20 judges, 400-plus employees, and a $72 million annual budget. She additionally serves as the presiding judge of the adult treatment court, focusing on treatment for Michiganders struggling with substance abuse and mental health challenges.

Known as a trailblazer in my home State, Judge Kumar's nomination helps reflect Michigan's rich diversity. If confirmed, Judge Kumar would be the first Michigander of South Asian descent to serve on the Federal bench in our State. And I'm pleased and I'm proud to recognize Judge Kumar not only for her experience, but for the diverse voice and perspective that I know she will bring to the Federal bench.

Now moving to the western part of the State, Judge Beckering is also a well-respected and eminently qualified jurist. For the past 14 years, Judge Beckering has served on the Michigan Court of Appeals, one of the highest volume appellate courts in the Nation, where she serves as chief judge. Through her service, Judge Beckering handles appeals statewide as well as the regular and administrative motion dockets for the court, which is based in Grand Rapids, and encompasses 17 counties in Michigan.

With three generations of lawyers in her family, Judge Beckering realized as an undergraduate at the University of Michigan that she wanted to serve others and make a difference in their lives. Following a law school graduation, Judge Beckering was a trial lawyer in private practice for 17 years and helped found the law firm of Buchanan and Beckering with her father in Grand Rapids, Michigan.

Judge Beckering has helped lead the Hillman Advocacy Program, a learn-by-doing 3-day trial skills workshop, and is vice president of the Grand Rapids Bar Association.

She recently completed 10 years of service on the Michigan Supreme Court Committee on Model Civil Jury Instruction and helped craft the definitive textbook on Michigan Civil Procedure Law.

I know that Judge Beckering and Judge Kumar will serve Michigan and our country well. These two jurists are strong legal minds who represent the best of their profession and Michigan. I have every confidence that they will be confirmed by the Senate and honorably represent Michigan and our country on the Federal bench.

Chair DURBIN. Thank you, Senator Peters. Senator Stabenow.

STATEMENT OF HON. DEBBIE STABENOW,
A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator STABENOW. Well, good morning, and thank you, Mr. Chairman, for holding this important hearing. And Senator Grassley, it's wonderful to see you here as well. And I, too, am extremely excited about the two excellent judicial nominees from the great State of Michigan, and also want to welcome their families and friends today to this very important occasion, I know, for them.

These two women have a few things in common beyond being outstanding nominees. They were both originally appointed to the court by former Michigan Governor, Jennifer Granholm. They have both since been elected by the people of Michigan to the positions that they hold. And they both attended the University of Michigan. And I say that as a Michigan State University grad twice, and we're in great competition. But not today. Not today.

Judge Shalina Kumar is nominated to be U.S. District Court Judge for the Eastern District of Michigan. And Judge Jane Beckering is nominated to be U.S. District Court Judge for the Western District of Michigan.

Since 2007, Judge Kumar has served on the Oakland County Sixth Circuit Court with great distinction. She was appointed chief judge of the circuit court in January 2018.

Prior to joining the bench, Judge Kumar spent a decade in private practice and has served continually, as my colleague, Senator

Peters, indicated with distinction at everything that she has done. If confirmed, Judge Kumar would be the first Federal judge of South Asian descent in Michigan.

Judge Beckering has more than three decades of legal experience. Since 2007, she has served as a judge on the Michigan Court of Appeals as the chief judge pro tempore of the court. And before that, Judge Beckering was a trial lawyer in Grand Rapids, serving with great distinction in that role as well, and has been actively involved in West Michigan legal community activities.

I am very excited for these two nominees, and I am confident that they are ready and prepared to serve the people of Michigan and serve our country on the Federal bench. And Mr. Chairman, I look forward to supporting them on the floor of the U.S. Senate so that they can begin their service. Thank you.

Chair DURBIN. Thank you very much, Senator Stabenow. We certainly appreciate your presence here today and the kind words you had to say about the nominees.

The last introduction will come from Senator Klobuchar relating to the second panel before we recognize Judge Koh for her consideration.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. I think this introduction couldn't be more timely with the testimony over in Commerce Committee yesterday on Facebook with the work that's going on all over the country with State attorney generals. And that is that I have the honor of introducing Jonathan Kanter as President Biden's nominee to be Assistant Attorney General of the Antitrust Division of the Department of Justice.

Jonathan is joined by his wife, Lisa, and his children, Abigail—good name; that's my daughter's name—and Benjamin. We are honored that you are all here with us today, and you must be very proud of your dad and your husband.

Jonathan was born in New York City, but he now makes his home in Maryland. Over the last two decades, he has represented numerous clients across a wide range of interests and has become one of our Nation's most distinguished antitrust practitioners. Respected for his deep experience and expertise, as well as his strong advocacy for vigorous antitrust enforcement, we could not ask for a more qualified nominee to lead the Antitrust Division.

Jonathan began his career as an attorney at the Federal Trade Commission, where he was involved in investigating and challenging anticompetitive mergers. He went on to private practice and worked for a number of prominent law firms. Then last year, he took the important step of starting his own firm, the Kanter Law Group, an advocacy-focused antitrust firm where he has continued to advocate on behalf of clients in favor of vigorous enforcement of antitrust laws against dominant firms.

Over the course of more than 20 years, Jonathan has represented clients, large and small, before the Antitrust Division, the Federal Trade Commission, and State Attorney General.

In addition to his expertise as a practicing attorney and his knowledge of the antitrust laws, he has a deep understanding of

the major competition policy issues confronting enforcers in the U.S. and around the world. That is why Senator Lee and I, actually together, invited him to testify before the Antitrust Subcommittee at a 2018 hearing about taking on monopolies.

We are at a critical moment in antitrust. There is growing bipartisan consensus that our country has a major monopoly power problem, and I really, really appreciate the work of our colleagues on both sides of the aisle on this issue. We need, and we agree on this, antitrust enforcers to do more to protect competition, stop the runaway consolidation of our markets, and crack down what are actually today's robber barons. That requires leadership—experienced leadership at the Antitrust Division that requires legal skill as well as, and I think this cannot be forgotten, the courage to take on some of the most powerful companies the world has ever seen.

This doesn't mean destroying these companies, eliminating these companies, it simply means allowing competition to flourish so we can rejuvenate capitalism, and have the next generation of successful companies. Jonathan Kanter possesses the skills to do this. That is why nine former Assistant Attorney Generals, Republicans and Democrats, wrote a letter, urging the Senate to act favorably and as quickly as possibly on his nomination.

Vigorous antitrust enforcement, as I said, is a bipartisan priority. American consumers, workers, and businesses deserve the benefits of free and fair competition. That's why we need him, Jonathan Kanter, at the Antitrust Division. I urge my Democratic and Republican colleagues to support the nomination. And I want to especially thank Senator Grassley for the work we're doing together on competition, as well as Senator Durbin for quickly calling up this nomination hearing so we can get a leader of the division in place.

Thank you.

Chair DURBIN. Thanks, Senator Klobuchar. I want to thank all of my colleagues for the introductions, and I'd ask the staff—I see they already prepared the table.

Judge Koh, would you please approach the witness table and stand if you would, for a moment?

[Witness is sworn in.]

Chair DURBIN. Thank you very much. Let the record reflect that the witness answered in the affirmative. Judge Koh, the floor is yours.

STATEMENT OF LUCY HAERAN KOH,
NOMINEE TO SERVE AS UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Judge KOH. Good morning. Thank you so much to Chairman Durbin and Ranking Member Grassley for holding this hearing and giving me the honor of being able to participate in this hearing. I would like to thank President Biden for the honor of this nomination. And to thank both Senators Feinstein and Senator Padilla for their support for this nomination, and also for their very generous and kind introductions.

I have with me today, and I'd like to introduce, my husband, is Mariano-Florentino Cuellar. He is sitting behind me with our daughter, Rhea, and our son, Mateo. My mother, Unsa Koh, is here, as well as my brother. My father passed away, but the two

brothers he loved so much are here, Segun and Ugun Koh. My aunt, Bangsho Koh is here. My cousin, Jenny, is here. And my cousin-in-law, Diana San-Ortega is here. There are so many other family members, friends, courtroom deputies, law clerks, externs, who wanted to be here today, but they are joining us online, and I'd like to thank them for their support.

So, thank you again for inviting me to participate today, and I look forward to answering your questions.

Chair DURBIN. Thank you very much, Judge Koh. You are no stranger to the Committee. You've been here before and have answered questions as asked. I will just remind my colleagues that with 14 years' experience on the bench, you've issued more than 3,250 written opinions, and presided over 271 total trials. There will still be efforts made by the Members of the Committee to ask you to be specific in your beliefs, and I know that there are certain areas where you can be and others where you cannot be. But I think the fact that you have so many published opinions should give us some indication of your judicial philosophy, as I've gleaned it from my review.

But I want you to speak to another topic, which I know is very important in your life, and one of the major reasons for your presence here today, and that is your family and their experience in coming to the United States. We have had so many inspiring immigrant stories. Yours is one of them, and I hope you'll share it with us now. What does this moment mean to you and your family?

Judge KOH. So, I am sad that my father is not able to be here today because he is the first one to immigrate to the United States, and he would have loved this moment. He loved this country. He studied every single President of the United States. He dragged us around every time to see every single Presidential library. He stood in the rain to watch when Presidents passed away to see their funeral processions. He made us stand in the rain to do the same. He loved the United States and was so grateful to be here.

My mother is kind of one of my heroes because she grew up in North Korea. And in 1946, in the spring, she decided that she wanted to go to South Korea where her father was working for the South Korean government. And so, she and her uncles basically escaped. It was illegal to leave North Korea. The 38th Parallel had been established in August the year before, but it was porous. It was not enforced.

So she and her uncles—she was about 10 at the time—walked for 2 weeks to come to South Korea, to freedom in South Korea. And along the way, it was—they had to go through all these military checkpoints, and the uncles would go through the check point, but she had South Korean currency and all their papers sewn into her undergarments. So she would just drop to the floor, and she would start playing jacks so that no one would suspect she was anything but a local kid.

And so then, once her uncles went through the checkpoint, they would all meet up again. And they walked at night. They rested during the day because they didn't want to be seen when they were going through all the mountains. And she got yellow fever during that time, but her uncle carried her on his back for—well, they shared the load because they were all getting tired at that point.

And the amazing thing is my mother never told us this story until my family, when I was in college, we were at Colonial Williamsburg, and we were walking around these fields. And my mom, who had never mentioned this, all of a sudden says, "Oh, this reminds me of the time I escaped North Korea." And we were all shocked, "What are you talking about?"

And later, I actually gave the commencement address at William and Mary Law School in Williamsburg, and in my address, I said, "I hope you don't take offense, but your town reminds my mom of North Korea."

[Laughter.]

So, I think this is a very special moment for my family, and I'm so grateful for everyone for allowing us to be here.

Chair DURBIN. Can you recount your family's experience living in Mississippi?

Judge KOH. Yes. So, we moved to Mississippi in 1972, and we first lived in Lorman, which is really a very small town. It only has Alcorn State University, which is the first African-American land grant college in the United States. And at that time, I did kindergarten in Alcorn. I went to an all-African American kindergarten, and there were no primary or secondary schools there. So we took like a 45-minute bus ride up to Port Gibson, and there we went to—my brother, sister, and I, went to public schools there. My first, second, and third grades were all African American. And I just remember at the time, there was an immense amount of poverty.

And my mom actually was a nutrition professor. And so, she was actually getting Federal grants to actually measure the success on the war on poverty. So she actually did a lot of studies about the poor—the poor rural population in Mississippi to see were these nutrition programs working? Was it enhancing their nutrition status and their health status? There was just a tremendous amount of poverty.

Later, I moved to Vicksburg, Mississippi in third grade, and I thought the school was integrated. It seemed integrated to me, but later in law school, when I was an intern for the NAACP Legal Defense Fund, I learned that there was actually a consent decree for my school district in Mississippi.

I think the poverty that I did see growing up is something that has always stayed with me. It's like an image that I can remember sitting on the buses, and seeing some pretty dilapidated homes, and little toddlers in front, crying. And that's been a searing memory that stayed with me.

Chair DURBIN. Thanks, Judge Koh. Senator Grassley.

Senator GRASSLEY. Judge, welcome. What you said about your Korean background reminds me a lot of what my daughter-in-law of 45 years has said. And if I learned anything from Korean people, it's the hard work ethic in how you can make a lot out of nothing. So, I congratulate you and your people.

Judge KOH. Thank you.

Senator GRASSLEY. I have asked a number of nominees about judicial philosophy. Some nominees aren't prepared to talk about their approach or won't admit that they have a judicial philosophy. You've been a Federal judge since 2010, 11 long years. So I'm hoping you can have a productive conversation with me.

When it comes to describing your judicial philosophy today, would you say that you are an originalist, or a textualist? Or how would you want to describe your judicial philosophy?

Judge KOH. So I do look at the text first any time I'm asked to interpret a statute or a constitution—constitutional provision. I do look to precedent from the Supreme Court as to what methods of interpretation they have used for that particular question. So in some instances, like in *Heller*, like in *Crawford*, the Supreme Court said, "Yes. You look at the original understanding. You look at original sources."

So I follow the Supreme Court precedent when they have analyzed something to see, how did they analyze it? What is the method that they use? And then I try to use the exact same—same method every time.

Senator GRASSLEY. You were a district judge handling *Tandon v. Newsom*. This was a case where two Californians wanted to hold Bible studies and prayer meetings in their home. The COVID rules in California prevented them holding indoor gatherings, even though California made exceptions for other gatherings like, just as an example, an in-home filming.

When you ruled against these plaintiffs, you wrote that they had, quote, "Little caselaw to support them," end of quote, in their argument that they were treated differently and unfairly.

When the Supreme Court reviewed this case, the Court reversed it. The Court called it unsurprising, that's their word, that the plaintiffs were entitled to host Bible studies at home because California's COVID law, quote, "Contained a myriad exceptions and accommodations for comparable activities," end of quote. The Court concluded by saying, quote, "That strict scrutiny is not watered down. It really means what it says," end of quote.

So, my question has to do with the standard of review. You applied *Smith's* rational basis review to the free exercise issues in this case. Now the Supreme Court has decided a lot of free exercise cases in the last 20 years. Can you name any Supreme Court case decided in the last 20 years where *Smith* controlled the outcome of the case?

Judge KOH. I actually used both rational basis and strict scrutiny in *Tandon*. And I relied on the precedent of the ninth circuit and the Supreme Court that existed at the time. And at that time, the precedent concerned houses of worship, and whether the capacity limits of the houses of worship were actually considered. And there wasn't any precedent at that time of having gatherings inside at the home.

And at that time, I relied on the precedent, and the sixth circuit had a decision that had the same rationale that I adopted that said, "If there is a rule that doesn't call out religion," because all of the other cases to that point had called out houses of worship specifically. And this one was a, what I thought, I understand that the Supreme Court disagreed, and that is the law of the land, and I understand. I do my best, but I don't always get it right.

Senator GRASSLEY. Okay.

Judge KOH. But they had said in the sixth circuit, and the Supreme Court did not enjoin the sixth circuit's decision, that if there is a neutral and generally applicable rule that applies to all

schools. It does not call out religious schools. It does not call out public schools. All schools. That is a neutral and generally applicable rule that can withstand scrutiny.

And so, at that time that I made my decision, that was the law, and I did my best to follow it.

Senator GRASSLEY. Okay. I think maybe you've spoken to this a little bit. But describe the standard that the Supreme Court currently applies to the free exercise cases and explain the legal standard in some detail.

Judge KOH. Sure. Let me do that. So, I'm actually—I'd like to start, if it's okay, with just what the holding in *Tandon* is from the Supreme Court, which is the law of the land, which I will follow faithfully, fully, fairly, in every future case.

Actually, if I may back up a minute. So, my understanding of how you analyze a free exercise case is you first look at is this a generally, pardon me, a neutral and generally applicable rule. And you first look at the text. But even if the text is neutral, if the Government, when implementing that rule had some kind of religious animus, it can still be invalid. So that's sort of the first step on neutrality. And then the second step you go to is the generally applicable.

So the Supreme Court has said, "If there are exemptions that require the Government to sort of look into, you know, what your basis is for trying to not be governed by this rule, that that's not going to be generally applicable if you've got exemptions."

Then the second thing that we look at is whether it's underinclusive and overbroad. For example, in the *Lukumi* case, you know, there were laws that on their face looked neutral, rightly applied, but it turns out that they really were just applying to Santeria practices and disposal of dead animals that way, and weren't looking at fishing, weren't looking at carcasses from hunting.

And so, in *Tandon*, what I understand the Supreme Court has now clarified as the law of the land, which I will faithfully, fully, fairly, implement in any future case before me, is they said basically four things:

They said, first of all, it is not neutral or generally applicable if any secular activity is treated better than religious exercise. It does not matter whether there is a secular activity that's treated equally or worse than religious exercise. There cannot be any secular activity that is treated more favorably. So that was number one.

Number two, they said when you're looking at comparability—so comparability comes in when you're looking underinclusive overbroad, that second prong of the generally applicable test. They said, "Look, you don't look at the reason why people gather. You look at what is the Government's asserted interest in imposing this restriction." You look at the asserted Government interests, not at the reasons why people are gathering.

And then the third thing they said is, "For the narrow tailoring under the strict-scrutiny analysis, you have to look at religious exercise with the same precautions that you would any secular activity." So they've explicitly said, "You cannot assume the worst of people when they go to worship and assume the best when they go to work."

The last thing the Supreme Court decided was on the issue of mootness that it doesn't matter whether the Government modifies or withdraws a restriction if there is the possibility that the Government official would reimpose that heightened restriction at a later time, the case is not moot.

And so, those are the holdings of *Tandon*, I believe, and that's how I believe it further clarified the existing framework—existing analytical framework. And again, that is what I will faithfully, fully, and fairly apply going forward.

Chair DURBIN. Thank you, Senator Grassley. Senator Feinstein.

Senator FEINSTEIN. Judge Koh, you've been a judge for more than a decade now, first in the California State courts, where you were appointed by a Republican Governor, and now in the Federal District Court of California, where you were nominated by a Democratic President.

How do you think your experience, serving as both a Federal and State court judge will shape your service as a Federal appellate judge if you were confirmed to the ninth circuit?

Judge KOH. So in State court, I had about 500 cases every week. I did criminal and civil. I also did drug court, domestic violence court, and just saw a full range of subject matter, of types of cases, of types of litigants. Similarly in the Federal court, I've had an average of about 719 cases per year. In 2017, I had 941 cases. It's a very high volume. We work very hard to try to get it right because if we don't and we get reversed, then it comes back and we have to do it all over again, and that is just a daunting situation. Similarly in the Federal system, I've done civil cases, I've done criminal cases, and I've seen the full range of subject matter.

I will say as a trial judge, what I really appreciate is clear guidance from the appellate courts. We really are just trying to apply the law to the facts before us in the case before us. So clear guidance is really helpful.

I would say that when I sat by designation on the ninth circuit, it gave me a new perspective on my own cases on how to make a record, on what I should make sure to address in my own rulings. And I'm hoping, since that experience gave me new eyes, I'm hoping that my experience as a trial judge, if confirmed, would give me just a really good perspective as an appellate judge.

Senator FEINSTEIN. I noted in reviewing your background that during your time as a judge, you have issued approximately 3,250 opinions, and you were reversed in only 43 of these decisions. By calculation, that's a reversal rate of about 1.3 percent, which is extremely low. What factors in your approach to deciding cases do you believe contributed to your low reversal rate?

Judge KOH. Well, I couldn't speak for how any appellate court reviewed my work, but I can just say that when I make any ruling, I really try to consider every single argument that the parties are making and try to be as clear as possible as to why I'm making any ruling that I'm making. So I will try to state as comprehensively as possible my reasoning.

And I will say that, you know, every reversal I try to learn from it. I try to glean, you know, what did I view differently that I need to view differently going forward? And so, with every reversal, I

learn from it, and I try very hard, and I do incorporate it into my work going forward.

Senator FEINSTEIN. Thank you. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Feinstein. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thank you, Judge Koh, for being here. In your decision in *Tandon v. Newsom*——

Judge KOH. Yes.

Senator LEE [continuing]. You stated a couple of things that I find troubling. I want to go over a couple of them with you. First, you stated that the right to earn a living is not a fundamental liberty interest that is traditionally and protected by the substantive component of the due process clause. And then you went on to conclude, therefore, that small business owners could be restricted from operating during the initial COVID–19 period of lockdown.

But in this case, also at issue, was the First Amendment right, the free exercise of religion. While hair salons, and grocery stores, and gyms, and private suites at sporting events, and movie theaters, just to name a few, were allowed to accommodate more than three households at a time. In your opinion, you denied a group of individuals the ability to gather in someone's home for the purpose of religious worship.

Now, last I checked, there isn't a constitutionally protected right, neither an enumerated right nor a right that's simply implied to get a haircut, or to go to the gym, or to the movies, or to attend a sporting event inside of a private suite, or to buy groceries. It doesn't mean that those aren't great things. It doesn't mean that those aren't things that should be free, and that people should be able to do at their leisure and will. But those things don't have their own separate constitutional provision protecting them.

So help me understand, Judge Koh, why it was that in this case, these religious plaintiffs were not given the same level of deference as those other people involved in other commercial activities, not religious activities?

Judge KOH. So, the aesthetician, who gave facials, and I think it was a gym owner, the plaintiffs who were bringing the right to make a living claim were not raising a free exercise claim. And at the time I issued that ruling, and I believe so even today, there is no precedent supporting their claim, so it was denied.

Now, as far as the free exercise claim, I will say the restrictions at the time did allow anyone to have religious services outside their home for up to three households. So it did allow it outside. The real question was inside the home. And at that time, I relied on the ninth circuit precedent which said, "Look at the factors of risk transmission, of ventilation, of the duration of how long are people speaking, are they singing." And I looked at those factors——

Senator LEE. I——

Judge KOH [continuing]. And the precedent that existed at the time.

Senator LEE. I get that.

Judge KOH. But I understand that the Supreme Court in *Tandon* has clarified this, and that is what I will follow.

Senator LEE. Right. And the Supreme Court did clarify it, and the Supreme Court did rectify the problem, using established precedent. And that's what confuses me here. That's what I'm not

quite grasping is why it wasn't more clear? I don't think anything could be clearer that there are rights that someone has with respect to their free exercise of religion that are different than one's interest in attending a gym or whatever.

Now, in the Supreme Court's opinion granting injunctive relief to the—to the free exercise claims, the Supreme Court, of course, took issue with the ninth circuit's failure to put the burden on California to explain why it couldn't allow one set of activities, but not another.

Now, you take a similar approach to what the ninth circuit did, and in so doing, you named six specific reasons why at-home religious services were, quote, unquote, "more risky." And I'll quote them here, quote, "People are together for a longer time to singing, changing, shouting, loud talking, and sustained conversations are more likely to occur. Three, ventilation is poorer. Four, masking and social distancing are less likely. Five, private gatherings are not required to implement safety measures mandated by health, and safety codes, and industry regulations. And six, large numbers of people may be in the same place at the same time."

Now, did it ever occur to you that religious people might agree to the same safety precautions as are found in other events? Perhaps more importantly, did it ever occur to you that there are a number of features in the constitution, including not only the free exercise of religion, but also the freedom of assembly and whatever you could make of the hybrid right that exists there to say nothing of the understanding of the establishment clause that's been interpreted to also preclude the prescribing, by Government, of means by which religious observances will be held?

What troubles me is that you apparently didn't see that here. I think that's fairly plain from precedent, and it shouldn't have had to go all the way to Supreme Court of the United States to implement not only established Supreme Court precedent, but also pretty clear mandates of the Constitution.

Can you help me understand? What I'm saying here, is that it appears you seemed almost to be suggesting that people needed permission of Government and Government supervision in order to carry out these activities that are protected by multiple provisions of the Constitution.

Judge KOH. So, the factual findings that I made were uncontroverted. The plaintiffs did not dispute the risk of transmission from gatherings at the home. Now, I did that multiple-factor analysis because that's what the precedent was at the time. The precedent of the ninth circuit at the time was you tick through these seven factors to determine whether the risk of transmission is greater.

And at the time, there really—there was no precedent that addressed private gatherings at the home. All the precedent at that point concerned houses of worship. And even, you know, multiple decisions had said that houses of worship restrictions that just said—in New York, they said 10 to 25 people in churches that had capacities of 500, 700, 1,000 people. And the precedent said, "You must consider the capacity limits. You can't just make—and found that that particular restriction was severe and far greater than any other comparable Government restriction.

So I understand what the ruling is in *Tandon*. That is what I will faithfully, fully, and fairly follow going forward. But at the time, I was relying on the precedent of my circuit, which I am required to do, which said, "You tick through these factors of ventilation, risk," all the risk of transmission. Are there people who are going to be there longer? What is the ability to enforce any masking or any social distancing inside the home versus in a commercial enterprise? And I did what the ninth circuit basically told me to do in its decision.

But I understand. I—I agree with you that the right to religious liberty is one of the most fundamental foundational rights in our country. And I will faithfully follow *Tandon*. But I was just doing my job at the time, which was to follow the precedent that existed in my circuit.

Now, I recognize that that was reversed by the Supreme Court after I issued my decision. I recognize that. But at the time, that's the precedent that existed, and I felt I had to follow it as a trial judge.

Senator LEE. Of course, that was precedent that had never been applied to this specific set of facts, but I see my time is expired. Thank you.

Chair DURBIN. Thanks, Senator Lee. Senator Whitehouse.

Senator WHITEHOUSE. Judge Koh, was this decision of yours that has attracted so much attention from Senator Lee appealed?

Judge KOH. It was appealed to the ninth circuit.

Senator WHITEHOUSE. And it was appealed on the ninth circuit. At the ninth circuit, where their circuit judges who upheld——

Judge KOH. Yes.

Senator WHITEHOUSE [continuing]. Voted to uphold the decision?

Judge KOH. Yes. It was affirmed by Judge Milan Smith——

Senator WHITEHOUSE. It was actually affirmed.

Judge KOH [continuing]. And Judge Bridget Bade.

Senator WHITEHOUSE. And among the panel judges that affirmed it, were there Republican appointees who voted to affirm?

Judge KOH. Yes. There were.

Senator WHITEHOUSE. And ultimately it was upheld by the ninth circuit, as correctly decided within the rules of the ninth circuit. Correct?

Judge KOH. That's correct.

Senator WHITEHOUSE. And then it went up to the Supreme Court, which is obviously where these things to get the ultimate review. And were there Supreme Court Justices who upheld or voted to uphold the ninth circuit's decision upholding yours?

Judge KOH. There was a dissenting opinion, saying, yes, they would have affirmed the ninth circuit.

Senator WHITEHOUSE. And was Chief Justice Roberts among the Justices?

Judge KOH. He said he would not have enjoined the ninth circuit ruling.

Senator WHITEHOUSE. Okay. Just wanted to make sure we are all talking about the same set of facts here. Thank you. Wish you well. Can't wait to see you on the court.

Judge KOH. Thank you.

Chair DURBIN. Senator Cotton.

Senator COTTON. We're going to keep talking about the same set of facts.

Judge KOH. Okay.

Senator COTTON. I mean, Ms. Koh, you make it sound like the Supreme Court, that it was clarifying unclear law. But that's not what the Supreme Court said in *Tandon*, which again is about people worshiping in their home, having Bible studies, and Gavin Newsom prohibiting that when restaurants, and casinos, and bars, and strip clubs, and movie studios were allowed to continue functioning.

You wrote that, quote, "With little caselaw to support them, the plaintiff's last argue that their in-home gatherings are being treated more harshly than other activities such as filming or going to laundromats or visiting hotels." The Supreme Court, as we've heard, disagreed. Not only that they disagreed, they said that, "Far from little caselaw to support them, we're overturning your ruling for the fifth time that the Court had rejected ninth circuit cases on California's pandemic restrictions." The Court noted that not only did you get it wrong in your decision, but that it is unsurprising—unsurprising that the litigants are entitled to relief. They said, "Not only do these kinds of restrictions require strict scrutiny," which you did not apply. You applied in the alternative, but you also said that it would pass strict scrutiny. The Supreme Court also felt the need to say that their precedent, quote, "Really means what it says."

So, I know we keep coming back to this, but we keep coming back to it because I feel like your decision was plainly contrary to the law at the time. And you keep portraying it as if it was just clarifying what was a very obscure and difficult area of the law. Is it really that obscure to say that if California wants to allow casinos, and bars, and strip clubs, and movie studios to stay open, they also have to allow Christians to have a Bible study in their home.

Judge KOH. The factual evidence that was before me was uncontroverted by the plaintiffs that the risk of transmission of COVID is greater when you're in a home versus in commercial entities that are actually regulated and can be subject to misdemeanor criminal prosecutions for not complying with the restrictions. That was the evidence before me.

Now having—having said that, I was following the precedent of the ninth circuit, which I'm required to do. I'm in the lowest level position in the Federal system as a trial judge. And they said, "You look at the risk of the transmission. You look at these seven factors," and that's what I did.

Senator COTTON. Well, what do you do when that ninth circuit precedent, as is often the case, is plainly contrary to the Supreme Court since the ninth circuit is the most reversed court in America?

Judge KOH. I don't think it's my role as a district court judge to just do what I want and ignore the higher court. I think it's my obligation to follow my circuit precedent.

Senator COTTON. Okay. So let's leave *Tandon v. Newsom*, the religious liberty case, then, since you say it's not your role to do what you want. Let's turn to a case involving the FTC and Qualcomm. FTC, at Apple's urging sued Qualcomm because Apple didn't like that Qualcomm's pricing structure meant that royalties on

Qualcomm's chips were more expensive if the phone they powered was more expensive.

So the FTC was doing Apple's bidding. You ruled against Qualcomm. You didn't just rule in the case of Apple specifically. You tried to force Qualcomm to renegotiate all of its chip contracts worldwide—worldwide. And then the ninth circuit overruled you, finding that your understanding of antitrust law was not just incorrect, but they ruled that you were trying to implement, and this is a quote, "A trailblazing application of antitrust laws," and that this trailblazing was, again, this is a quote from the ninth circuit, "An improper excursion beyond the outer limits of the Sherman Act."

So, if you're confirmed as a circuit court judge, how are we to be certain that you're not going to continue to go on such trailblazing, improper incursions beyond statutory texts and precedent, not just in the antitrust domain, on something as important as semi-conductor chips, but in every other area of law?

Judge KOH. In the *FTC v. Qualcomm* case, I was actually relying on two precedents of the ninth circuit. *Microsoft v. Motorola*. The first case was decided in 2012. The second case was decided in 2015. They held that if you are a patent owner, and you go to a standard setting body, and you tell that body, "If you adopt my patents into the standard that everyone worldwide will practice, I will give anyone a fair, reasonable, and nondiscriminatory license." And the court held that that obligation requires you, then, to give that fair, reasonable, nondiscriminatory license to all comers. That is what my *Microsoft v. Motorola* says. And that was even the understanding of *Qualcomm*. That is what they told the IRS in a recorded conversation in 2012. When Motorola wasn't giving a license to Qualcomm, Qualcomm made the same demand to Motorola saying, "You have a FRAND obligation, a fair, reasonable, and nondiscriminatory obligation to license us your standard essential patents because that is the commitment you made."

And so, repeatedly throughout the documents, we had a long, lengthy trial, and all of this was based on the record. My opinion was 233 pages. I made credibility determinations. I made factual findings. And that was Qualcomm's understanding, as well throughout all the documents that they knew they had an obligation.

So, I understand that the decision that I entered is completely vacated and is completely, legally just invalid. So I will follow the precedent of the ninth circuit. But I just wanted to let you know by defending my decision, I'm in no way saying that it's still good law. It's not. But I did just want to let you know at the time what was in my mind. I really did think that I was following the law. And I really, sincerely, was trying to do my job.

Senator COTTON. I understand. My time is expired. I just want to say that you say that you're following ninth circuit precedent. It's the ninth circuit that reversed you and didn't say it was a close call. It said it was a trailblazing application of antitrust laws and an improper excursion beyond the outer limits of those laws.

Chair DURBIN. Thank you, Senator Cotton. The order of Senators asking are Blumenthal, Kennedy, Hirono, Tillis. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank you for your service, Judge Koh. And thank you for not only your service on the bench, but your service as a practicing litigator for your family supporting you here today and throughout your career.

I'd like to enter into the record a letter that has been sent to the Committee by Father Paul O'Dell of the Saint Denis and Our Lady of the Wayside Churches.

Chair DURBIN. Without objection.

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

Senator BLUMENTHAL. I was interested in this letter because it depicts a little bit about what your family does in the community. Maybe you can describe what you and your children do at the church, and perhaps a little bit about how you've assisted Father Paul O'Dell.

Judge KOH. So, for both my husband and I, our faith is very important to us. We are still friends with the priest who married us. We have promised him on our 20th anniversary, we're going to take him on a Hawaii trip to celebrate. He is also the one who baptized our daughter, Rhea, who is here today. Unfortunately, he got reassigned to another—another universe, and he was not able to baptize—a different priest baptized our son, Mateo.

But our faith is very important to us. And we love our community at Saint Denis. And both of my children went through their 2-year confirmation process, which, as you imagine for a teenager, is quite a task to ask. It's a big ask to make a teenager to do that for 2 years.

Senator BLUMENTHAL. Probably kept them off Instagram a little bit.

Judge KOH. But both of my children completed that program. They both received the Sacrament of Confirmation. We have, for many years, worked at the Maple Street Homeless Shelter, which is the homeless shelter that is just about 15 minutes, 20 minutes, from our house. And the second Sunday of every month, we prepare food. And pre-COVID, we actually got to serve it. And the kids actually also ran a bingo where we gave cash prizes to the bingo winner. And we've continued to do that during COVID, although we can't serve any more. But we have also have served—provided breakfast in addition to dinner, as well.

And we really want to support our priest, who, as he mentioned had a health issue. And we've all been praying for him and trying to provide him everything he needs to be comfortable. And he's been really wonderful to our family.

Senator BLUMENTHAL. Thank you. And thank you for your service to the community. I assume that you would have no trouble separating your faith from your performance in the capacity as a judge on the ninth circuit and implementing the law as you see it.

Judge KOH. Absolutely not.

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

Chair DURBIN. Senator Kennedy.

Senator KENNEDY. Congratulations, Judge.

Judge KOH. Thank you.

Senator KENNEDY. I enjoyed meeting your family. As I understand the case, the religious liberty case, you ruled that government in California could prohibit a small group of people from wor-

shiping their God at home because of the risk of COVID. Did I speak correct?

Judge KOH. Inside the home. Outside the home, three households could gather——

Senator KENNEDY. Inside the home?

Judge KOH. Yes.

Senator KENNEDY. This was in—what—this was in California?

Judge KOH. Yes. The restrictions were specifically, that were challenged, were Santa Clara County——

Senator KENNEDY. Yes, ma'am. I don't want—I've only got a——

Judge KOH [continuing]. California.

Senator KENNEDY [continuing]. Limited amount of time.

Judge KOH. Sure.

Senator KENNEDY. It was in California?

Judge KOH. That's correct.

Senator KENNEDY. Sorry to interrupt you. Is there something about COVID in California that makes it more likely for a handful of people in their home who are worshiping Allah, or the Dalai Lama, to get COVID than a handful of people in a strip club?

Judge KOH. California, and particularly my county, where my courthouse is based, had the first confirmed death of COVID in February 5th of 2020.

Senator KENNEDY. Yes. Was it in a strip club?

Judge KOH. No. You were just asking me what were the situations in——

Senator KENNEDY. Yes. This is what I'm getting at.

Judge KOH. Yes, sir. Go ahead please, sir.

Senator KENNEDY. In this case, didn't you want to just kind of step back and say, "This is craziness?" You know, "My government here in California is prohibiting a handful of people from worshiping their God because of the risk of COVID. But the same people, if they want to, can go to a strip club." Does that make sense to you?

Judge KOH. The evidence that was before me——

Senator KENNEDY. I understand that. But it doesn't make sense——

Judge KOH [continuing]. Had uncontradicted——

Senator KENNEDY [continuing]. For the American people. I don't want to beat this to death. Let me ask you a couple more. Did you enjoy mostly in Mississippi?

Judge KOH. I'm sorry?

Senator KENNEDY. Did you enjoy living in Mississippi?

Judge KOH. Yes. I did.

Senator KENNEDY. Yes. Good. You talked about the poverty in Mississippi. Where do you live now?

Judge KOH. I live in Menlo Park, California.

Senator KENNEDY. Okay. Is there poverty in Menlo Park?

Judge KOH. Yes. There are parts of—yes. That's correct.

Senator KENNEDY. Is it—is it a deep poverty?

Judge KOH. I couldn't give you a——

Senator KENNEDY. That's okay.

Judge KOH [continuing]. Exact answer to that question.

Senator KENNEDY. I understand. I just want to make sure California—I'm not happy about either circumstance, but you zeroed in

on Mississippi, and I just wanted to make sure you weren't picking on Mississippi.

Judge KOH. No. I was just asked about it. Chairman Durbin specifically asked me to talk about Mississippi. That's——

Senator KENNEDY. Right. Are we getting——

Judge KOH [continuing]. The only reason why it came up. Yes.

Senator KENNEDY. All right.

Judge KOH. I originally didn't mention it in my family story.

Senator KENNEDY. I'm just curious, do you know the name of the person who cleans your office?

Judge KOH. Yes. Steve is the one who takes out the garbage every day. He comes by at 3 o'clock. And Eva is the one who cleans in the morning——

Senator KENNEDY. Good for you.

Judge KOH [continuing]. About 7 a.m.

Senator KENNEDY. Good for you.

Judge KOH. Yes.

Senator KENNEDY. Look, I'm not real big on holding people too accountable for crazy things they said when they were young, because I've said a few myself. I've even done a few things. But I got to read you this from an article you wrote when you were at Harvard Law.

I'm going to quote, if that's okay. I'm not going to paraphrase. Here's what you wrote, "Minority judges still need to maintain the disguise of objectivity or face challenges to their decisions. Yes. A minority judge is going to identify with a minority party's experience—experiences, but she can't admit this. We've got to get more clever in saying, 'Look, we're just as neutral as any 60-year-old white man.'" Do you still believe that?

Judge KOH. Not at all. I disagree with that 100 percent. It is something I said 31 years ago. My 1L, fall semester year, fall of 1990, and that is completely wrong. Our rule of law absolutely depends on impartiality, fairness, and I completely disagree with that statement.

Senator KENNEDY. Yes. Could I just ask you, did you make that statement based on—well, why did you make that statement? What were you thinking then?

Judge KOH. I was having a conversation with three 1L classmates in a room, and I think that statement shows a lack of maturity.

Senator KENNEDY. Yes.

Judge KOH. It shows a lack of experience in the world. Shows a lack of knowledge about the law. And I completely disagree with it.

Senator KENNEDY. Okay. Fair enough. Congratulations.

Judge KOH. Thank you.

Senator KENNEDY. I'm done, Mr. Chairman.

Chair DURBIN. Senator Hirono.

Senator HIRONO. Thank you very much, Mr. Chairman. Ms. Koh, I think it's really wonderful that your entire family is here, and I am sure your father would be very proud of you and thank you for sharing your mother's story because it says a lot about you, I'd say.

I do start all of my questions of nominees to any of the Committees on which I sit the following two questions: Since you became

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

Judge KOH. No.

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

Judge KOH. No.

Senator HIRONO. Judge Koh, I want to thank you for the extensive discussion we had regarding the *Tandon* decision, which was a recent Supreme Court decision, wasn't it? This year?

Judge KOH. Yes. It was this year.

Senator HIRONO. So it's very clear that when you made your decision in that case, you were following precedent at that time, which is why the ninth circuit sustained your decision, even if one of the judges on the ninth circuit was a Trump nominee, a Trump judge, I'd say. And then why Chief Justice Roberts and his dissent supported the ninth circuit's sustainment of your decision. You've made that very clear.

As far as I can tell, the *Tandon* decision of the Supreme Court says to me that it opens the door for the argument that any time somebody doesn't like a governmental restriction, they can argue that it interferes with their religious free—what is it—free assembly because the standard that the Court set up for overcoming that kind of argument is extremely high, and I don't even know how anyone can meet that kind of burden, but I'll set that aside.

In *National Urban League v. Ross*, you enjoined the Commerce Department and Census Bureau from implementing the 2020 Census Replan, a plan adopted on August 3, 2020, that shortened key census data collection and processing dates. And it makes a really big difference when the time of the taking of the census is shortened in this way. And you specifically mentioned the paucity of the administrative record and found defendants had failed to consider important aspects of the problem, consider alternatives, articulate satisfactory explanations, or consider reliance interests. Ultimately, the Supreme Court decided to stay your order, granting a preliminary injunction.

The Supreme Court's decision of this ruling was issued as a shadow docket ruling. So we don't know what they may have disagreed within your decision. And in fact, we really have no idea what their legal rationale was for granting a stay. Isn't that correct?

Judge KOH. Well, there was only one dissenting opinion. There was no opinion granting the——

Senator HIRONO. Yes, so that's what happens in a shadow docket ruling. So although the stay was granted while litigation continued, what was the effect of the ruling? So, the State allowed the government to end the census count immediately, a decision that probably could not have been undone, given the tight deadlines and practical difficulties. So what was the effect of this ruling? Can you discuss that a little bit?

Judge KOH. Well, I don't know what the effect of the ruling was, but I can tell you what happened in the case is that originally the Census Bureau took almost 10 years to come up with a plan to do data collection, data processing. They did about eight surveys. They

consulted with statisticians, demographers, economists, to try to get the best plan together.

They put one together, but because of COVID, they had to stop field operations. And one of the big issues was the reliance interests of all the Census Bureau partners. And they went out and they advertised at food banks, on bus station shelters, "This is the deadline to get your information, your census questionnaire in." And so, if you keep changing the date, it's impossible for these partners of the Census Bureau to continue to keep telling people, you know, "October 31st is the new date. No. September 30th is the due date. No. October 5th is the due date. No. October 15th is a due date."

It takes a lot of time and money for the Bureau partners to get that information out. And the constant shifting of the deadline makes it just harder for people to know when the deadline is and to be counted.

Senator HIRONO. And I say, therefore, it makes it much harder for us to obtain an accurate census count if people are confused and all of that. And this is only one example of the Trump administration trying to really shorten or influence the kind of people who would participate in the census because they also tried to put in a citizenship question. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Hirono. We have Senators Hawley, Booker, and Tillis.

Senator HAWLEY. Thank you, Mr. Chairman. Ms. Koh, congratulations on your nomination. Let me just ask you a baseline question about the free exercise clause in the United States Constitution. Is it limited to houses of worship? Is it limited to physical space of a house of worship?

Judge KOH. No. It is not.

Senator HAWLEY. So, I'm struggling to understand your opinion in the *Tandon* case. I don't understand why you would think that businesses should be able to abide or should be able to be open, and people should not be able to gather to worship in their own homes. Why would you assume that people gathering in their own homes wouldn't follow the guidelines, wouldn't obey the restrictions, and therefore couldn't be trusted? Help me understand that assumption. I just don't quite get it.

Judge KOH. On my part, it wasn't an assumption. That was the scientific evidence and the only evidence on that issue that was presented in the record.

Senator HAWLEY. Wait. It was scientific evidence that people of faith don't follow rules?

Judge KOH. No. But that the risk of transmission is greater inside a private home than in a commercial entity that is regulated, that can be subject to criminal penalties. I recognize——

Senator HAWLEY. Wait a minute. Wait a minute.

Judge KOH. Yes.

Senator HAWLEY. I'm sorry, but your opinion says, "Under the State's restrictions, commercial environments require masking and social distancing, a requirement that can be enforced by commercial workers. On the other hand, at plaintiff's gatherings, it is uncertain whether participants in these gatherings would maintain social distancing."

Judge KOH. My order also mentioned that there are criminal penalties for not complying with the restrictions on commercial entities.

Senator HAWLEY. Right. So you assumed that because of those, that commercial businesses will comply, but you assumed religious believers would not comply. I'm just trying to understand why you disfavor religious believers in this way that seems very personal.

Judge KOH. As I—all I can say, Senator Hawley, is that I certainly have no animus toward any person of faith. I myself——

Senator HAWLEY. Do you think we have a——

Judge KOH [continuing]. Am a person of faith.

Senator HAWLEY [continuing]. Implicit bias? Let me ask you this.

Judge KOH. No. But——

Senator HAWLEY. In the 2020 Women's Collective Summit, you said last year that, "stereotypes are deeply embedded in many people," I'm quoting you now, "and they may not even be aware that they're there." Do you think maybe that describes your view toward people of faith? I mean has the Supreme Court's reversal of you maybe prompted you to confront some implicit biases you may have against people of faith?

Judge KOH. I'm a person of faith, so I would have to be having a bias against my own self and myself and my——

Senator HAWLEY. So you're telling me no? The answer is no?

Judge KOH. I do not believe that I am biased against people of faith. I'm a person of faith. My whole family is a family of faith. But——

Senator HAWLEY. Let me read to you what the Supreme Court said about your reasoning. They said, "You cannot assume the worst when people go to worship but assume the best when people go to work." Why did you assume the worst when people go to worship?

Judge KOH. I did not assume the worst.

Senator HAWLEY. So they're wrong about that.

Judge KOH. No. I'm just saying that, at the time, I looked at the evidence before me, and I looked at the ninth circuit precedent at the time, which was—you're supposed to look through these seven factors about increased risk of transmission. And that's the precedent I followed.

I completely will fully, faithfully, fairly, in every case going forward, adopt all four of the holdings that the Supreme Court made and clarified in *Tandon*. And I understand you cannot assume the worst of people as they go to worship from when they go to work.

Senator HAWLEY. But you think the Supreme Court mis-described your opinion in this regard when they said, "The State cannot assume the worst when people go to worship but assume the best when people go to work"? Do you think that's a misdescription?

Judge KOH. I understand that's the law, and that is what I am going to follow. I certainly had no intent to—I certainly had not intent to do that. At the time, I was following existing ninth circuit precedent at looking at risk of transmission, and making findings based on the record, which is what I understand to be my job. I understand now that comparability has to be assessed in a different way. I understand that what the rule is on the narrow tai-

loring for strict scrutiny analysis. I understand how you look at what is neutral and generally applicable. All of that clarification I really appreciate. I did not have it at the time when I issued that ruling. But I will fully, faithfully, and fairly follow that going forward.

Senator HAWLEY. Well, all I can say is that I'm concerned about the tone of your opinion. I'm concerned about the assumptions that underly it. I think the Supreme Court's reversal of it was quite significant. And I think the assumptions that people of faith can't be trusted, that people who go to strip clubs, as Senator Kennedy said, can be is frankly pernicious and something that's worth further examination.

And for those reasons, among others, I can't support your nomination. Thank you, Mr. Chairman.

Chair DURBIN. Senator Booker.

Senator BOOKER. Thank you very much. I appreciate the line of questioning, but I'm concerned that in some way it casts a shadow over how precious you hold ideals of faith and the freedom of religion in our country. And especially as someone who is religious and has such strongly held religious principles, and I imagine they guide a lot of your life, I think that an implication is being made that just is not true.

So I want to ask you very bluntly, I love Star Trek. I am truly a devotee of that series. In this case, if I was having a Star Trek gathering in a house, according to the data and the science that was put before you, that would be very dangerous. Yes?

Judge KOH. Yes. And under this restriction, you wouldn't be allowed to have a Star Trek gathering in your home.

Senator BOOKER. Right. And so really, whether the gathering in the home was for a religious purpose, and some people—a great book about the religions of Star Trek, you should probably read it at least somewhere on your reading list. Whether it was a religious purpose, or a club, or a grouping, the science was what was compelling in this. It was the safety and the security of individuals, whether the Supreme Court overruled you or not, that seems in this case what was driving your decision. Correct?

Judge KOH. That is. And it was uncontroverted in the record. And also, you could have a Star Trek party outside your home with three households.

Senator BOOKER. I really appreciate that, and I'm going to think about that when I go back this weekend about the New Jersey Star Trek Association. I failed to become President of the United States, but I am the President of the Northeastern Star Trek Association. So you can refer to me as Mr. President, not Senator. Thank you very much.

I want you to know that the religious organizations, you have a lot of support from organizations of faith. I mean, it's pretty extraordinary. And if I can read this, this is from Saint Thomas More Society of Santa Clara, and I'll submit the letter for the record, but I just want to say the end, because these are such sacrosanct, American ideals to respect the freedom of religion. And I know you believe strongly in that. And I just want to say that the last sentence, which I'll read, is, "We know Judge Koh to be a person of deep-seated faith. We believe her faith will serve her well as an im-

partial appellate judge. We ask God's blessings on you as you consider her nomination." And that was sent to Senator Durbin and Senator Grassley. So Senator Durbin and Grassley, you have been prayed for. They ask God's blessings on the two of you.

I want to say to you one last question if I can, and then I have an issue of personal importance to me, and I apologize for doing it in a public forum. But the last question is, why is having someone, you would be the first Korean woman to serve as a Federal judge, why is different lived experiences important for the bench when judges are supposed to be objective on the law? Are those conflicting ideals that's an urgency that I feel to have a Federal judiciary with diversity on it with different lived experiences, yet we all, I think both sides, want our judges to be objective interpreters of fact and abide by the law. Can you explain that to me?

Judge KOH. I think diversity on the bench serves two really important functions. One is to just enhance confidence in the justice system. And the second is just to reaffirm the American dream. Anyone can become a judge. That is a very powerful message to send the world and to send our own communities. So I think the role modeling function that a diverse bench serves to students, to law students, to young lawyers, is really valuable.

Senator BOOKER. Okay. And then forgive me the matter of personal issue that I have. Did you introduce your husband before here? I came late to the hearing.

Judge KOH. I did. I did.

Senator BOOKER. What is his name again?

Judge KOH. Mariano-Florentino Cuellar.

Senator BOOKER. Are you aware that I know your husband?

Judge KOH. I am aware.

Senator BOOKER. Okay. So I want to submit this for the record. So generations of your family will come back and read this truth. Your husband married up. Thank you very much.

[Laughter.]

Senator BOOKER. Thank you, Mr. Chairman.

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

[Laughter.]

Chair DURBIN. Senator Tillis.

Senator TILLIS. I was going to say Captain Kirk, but——

Senator BOOKER. Jean-Luc Picard. The haircut. The Jean-Luc Picard.

Senator TILLIS. Senator Booker, I have an affinity for Star Trek, as well. Maybe we should start a Star Trek caucus.

Senator BOOKER. I agree.

Senator TILLIS. Judge Koh, thank you for being here. Congratulations on your nomination, and congratulations to your family. I know they're probably all proud.

I just want to go back briefly. I'm not going to read the statement that Senator Kennedy read. When I asked you about this in 2016, you said you completely disagree with that.

I think one of the reasons why we go back 31 years and longer is the standard keeps moving here. We've gone back to high school yearbooks for what some teenager said or wrote in their yearbook as a basis for judging someone's qualifications as judge. I tend to disagree with it, but I do want to ask you a question that really,

in abstract. Because when you read the statement, it does say that you need to disguise it. So when you answered me back in 2016 that you completely disagreed, can I be absolutely certain that you're still not disguising that bias? And maybe one way that you could put me at ease is maybe describe some case in abstract, I know you probably won't want to get into details, where you may have had a certain sympathy, but you had a hold—to make a decision in the other direction. Have you ever had an experience like that as a judge?

Judge KOH. When I preside over any case, my personal feelings are irrelevant. That's not my job. And I appreciate that you're taking your advice and consent role very seriously. And I understand. That statement is disturbing. It's disturbing to me.

Senator TILLIS. I think so.

Judge KOH. So, I think it's completely a fair question. But I completely disagree with it. And I think if you look at 3,250 written opinions and the thousands of issued rulings I made on the State court, having 500 cases a week, you can see that I have been fair and impartial. I—my judicial oath is so important to me, and I completely do my level best to be fair and impartial in every case and to try to get it right by limiting my decisions to the facts before me, limiting my rulings to the issues before me, and following precedent.

Now, as I've said, I may not——

Senator TILLIS. That's sufficient for me. I'm not going to cover more——

Judge KOH [continuing]. Get it right all of the time, but that's what I'm trying to do.

Senator TILLIS [continuing]. Into that. I want to get back to I'm the Ranking Member, previously the Chair, of the Intellectual Property Subcommittee. So I do have to get back to *Qualcomm*. And as Senator Cotton said, it was characterized as a trailblazing application of antitrust laws and an improper excursion beyond the outer limits of the Sherman Act. So, I think you said that you wrote a more than 200-page opinion with that one.

Judge KOH. I did, 233 pages of factual findings and credibility findings.

Senator TILLIS. It was largely, or at least that it was substantially influenced by the prior *Motorola* case?

Judge KOH. That's correct.

Senator TILLIS. And that was a ninth circuit precedent. Do you—so looking back at their assessment of what is now a vacated opinion, do you agree with the ninth circuit's interpretation in the context of the *Motorola* case, and in the context of your finding?

Judge KOH. The ninth circuit decision is the controlling law, and that is what I am going to apply.

Senator TILLIS. Yes. But I mean it's more a matter of—and I'm not an attorney, so I don't know if I get you into a position where you can't answer the question based on other cases that may come before the court. But I'm looking more at more of a "I didn't think about it that way when I was writing my opinion," because they looked at the same thing. They looked at binding precedent. Right? And then they looked at your ruling.

And so, I'm just trying to get a sense, did you learn from that and say, "If I really viewed it from that perspective, I would have ruled differently?"

Judge KOH. I had, you know—personally, for me, antitrust is a really complex area of the law, and I certainly can see that there are different viewpoints.

Senator TILLIS. Yes.

Judge KOH. The ninth circuit did not address this standard-setting body FRAND obligation directly. They just said the remedy——

Senator TILLIS. That's actually——

Judge KOH [continuing]. Should be in contract or it should be patent and shouldn't be an antitrust law. So they didn't actually address *Microsoft v. Motorola* head-on.

Senator TILLIS. All right.

Judge KOH. They just said, "You need to go to other areas of law for remedy."

Senator TILLIS. Let me just get back to in my remaining time. Do you think worldwide injunctions on issues involving patents and patent license issues are appropriate?

Judge KOH. I—the Supreme Court says that injunctions at any point, preliminary or permanent, are an extraordinary remedy. But the standard is without undue burden on the defendant, you need to provide complete relief to the parties. And in antitrust law, there are a lot of—you know, once the Government shows liability on an antitrust case, all of the presumptions go in favor of the Government for the remedy.

And an antitrust law for injunctions, you've got to basically disgorge the profits. You got to stop the monopoly. You've got to prevent the monopoly from going forward. There are really very high bars to antitrust injunctions.

Senator TILLIS. I'm going to submit some questions for the record in the patent space. But I think that in the ninth circuit ruling, they said—and I think this is important for our innovation economy. There's a difference between being anti-competitive and hyper-competitive. And I want to make sure that we're very clear on that distinction because hyper-competitive in an increasingly threatening world, particularly with respect to nations like China, is exactly what we need to do to maintain our innovation edge today.

But I will submit some other questions for the record. Thank you, and congratulations again to your family.

Judge KOH. Thank you.

Chair DURBIN. I'd just like to announce, since we have a second panel, that there are four Senators, two Democrats and two Republicans, who said they still are going to try and make it. Some have conflicts with other Committees, and I want to give them the latitude and flexibility for that purpose. One of the four is here now. Senator Cruz, you're recognized.

Senator CRUZ. Thank you, Mr. Chairman. Judge Koh, welcome. As I look at your record, your record is concerning from the perspective of a judge who will faithfully apply the law. As I look at your record, I see the record of someone who's been an activist her entire adult life.

When you were a law student at Harvard Law School, you participated in a 25-hour sit-in in the dean's office, pressing for racial quotas and hiring at law school. At the time, you described your views of judges, where you said, "The problem of the American legal system was the homogeneity of the bench," and your proposed solution was, quote, "minority judges still need to maintain the disguise of objectivity or else face challenges to their decisions." You went on to say, "Yes, that minority judge is going to identify with their own experiences, but she can't admit this. We've got to get more clever and say, 'Look, we're just as neutral as any 60-year-old white man.'" What's more pragmatic, "To pretend we're objective or to deconstruct objectivity itself."

Now you've tried to back away from that statement since then. But what on earth did that mean?

Judge KOH. Let me first say I have never advocated for quotas. Quotas are unconstitutional. As I said, I do disagree with that statement completely. That was 31 years ago. Since then, I have been a Federal criminal prosecutor, I have been a judge on the State court, hearing 500 cases a week, I've been a Federal district judge for almost 12 years, hearing 719 cases a year, and I have 3,200 opinions——

Senator CRUZ. So my question was, what does that mean, not how many decisions have you heard as a judge. What did that you mean when you said that?

Judge KOH. No. I'm just saying that there is a record, a record to determine——

Senator CRUZ. Judge, you're familiar with asking questions and answering questions. What did you mean when you said that?

Judge KOH. I—it was 31 years ago. I don't recall specifically, but I'm sure I said—you know, what I said is what I meant at the time. I think it's completely wrong. I disagree with it. That's not how I've lived my life, how I served the government——

Senator CRUZ. So, I guess the challenge is what you said is that, at the time, when you were in law school, you weren't a child. You were a student at Harvard Law School. You said that "Judges need to maintain the disguise of objectivity and get more clever and pretend to be objective." And a difficulty for this Committee is if you were following that instruction, you'd say the exact same thing right now, wouldn't you?

Judge KOH. I am under oath, and I am telling you that I completely disagree with that statement. And you can look at the 271 trials——

Senator CRUZ. Then let's go to your judicial record.

Judge KOH. Yes.

Senator CRUZ. Because I look at your judicial record, I am concerned, as well. Recently, you determined that a State regulation that banned Bible study that banned collective prayer that banned worship in an individual's home, while at the same time allowing activities like in-home commercial filming was neutral and generally applicable. According to you, according to the decision, apparently people who attend Bible study are a greater threat under COVID than movie stars when it comes to health and responsibility.

Now that decision, of course, went up to the U.S. Supreme Court, and 6-to-3, the Supreme Court said, "No. You're wrong." What did you get wrong?

Judge KOH. The Supreme Court in *Tandon* has held that when you're looking at comparable activity, you look at the government interest that's asserted, and not the reasons why people are gathering. That clarification has been very important. That is what I will fully, faithfully, and fairly apply going forward. They also said you can't assume——

Senator CRUZ. Why did you think that movie stars somehow are held to a different standard than people who are coming to a Bible study?

Judge KOH. I was following the ninth circuit precedent. They looked at all the restrictions on the movie industry and said that the risk—transmission risk was lower because of all the restrictions. They had mandatory multiple testings per week, and they had a lot of restrictions that said that they had scientific evidence that the risk was lower.

Senator CRUZ. Your opinion applied rational scrutiny to this restriction of religious freedom. The Supreme Court reversed that and applied strict scrutiny. There's a world of difference between rational basis and strict scrutiny. Again, why did you get it so wrong? And how can the American people have comfort that if you're a court appeals judge, you will faithfully protect their rights to religious liberty?

Judge KOH. I applied strict scrutiny as well, and I was following ninth circuit precedent at the time, which said you look at the risks of transmission, and you go through seven factors to consider it. And at the time, the sixth circuit decision, which was not enjoined by the Supreme Court said, "If you have a neutral, generally applicable rule that applies to both religious schools, and public schools, and other private schools, that that survives strict scrutiny." And so, the precedent that existed at the time is what I followed in issuing my decision. But I fully——

Senator CRUZ. Can you answer my second question?

Judge KOH. But I fully understand that *Tandon* is the law of the land. That is absolutely what I will follow, that you cannot assume the worst when people go to worship and assume the best when they go to work; and that you have to look at the government interest at stake. And that you—all of the rulings and holdings in *Tandon*, that's the law of the land. That's what I will apply going forward in any case that raises these issues.

Chair DURBIN. Thank you, Senator Cruz. Senator Ossoff, Senator Blackburn, and Senator Padilla.

Senator OSSOFF. Judge Koh, congratulations on your nomination, and thank you for enduring this process. Thanks to you and your family for your commitment to service.

If confirmed, Judge Koh, you will become the first Korean-American woman to serve as a Federal appellate judge. When you became a district judge in 2010, you became the first Korean-American woman in the Nation to serve as a Federal judge. Could you share with the Committee a little bit about your family's story, the barriers you've broken, and the importance of diversity on the Federal courts?

Judge KOH. Let me start with the importance of diversity on the Federal courts. I think it is so important to reaffirm the American dream that anybody can become a judge in the United States. I think, also, it's important to just enhance the confidence that everyone has, the community has, in our justice system.

I would just say that my family has lived in Mississippi, in Maryland, in Oklahoma, and California, and so many other parts of this incredible country, and we really appreciate all of the opportunities that we've been given.

And my father was an immigrant from South Korea. My mom had escaped North Korea as a child. And I think that they wanted to make sure that we had every opportunity as children here, and we made the most of it, as much as we could. I find my mother's story of escaping North Korea and being a professor at the first African American land grant college in the United States, which is Alcorn, which is in Lorman, Mississippi, has been really inspiring for me. And she's been my role model.

Senator OSSOFF. Thank you, Judge Koh. And you have a significant record as a jurist, spanning nearly 14 years, and more than 3,000 written opinions. What are some of the lessons you've learned during your time on the bench, both State and Federal? And how will those lessons inform your service on the ninth circuit?

Judge KOH. So, I have just had a lot of exposure to so many different areas of the law and so many different types of cases, so many types of litigants. In State court, I also did drug court and domestic violence court in addition to civil and criminal cases. I was hearing about 500 cases a week. And on the Federal system, I've pretty much had everything, civil and criminal as well, and it's been just eye-opening for me of how important it is to have clarity from the appellate courts. Because, at the trial level, we're sort of on the ground floor, and we're trying to apply precedent and apply guidance from the circuit. And it is so much of an easier task when the appellate courts are clear. And I hope, if confirmed, that I could add that perspective to the appellate bench.

Senator OSSOFF. Thank you, Judge Koh. And final question, will you commit to this Committee that you will uphold the rule of law, apply the law fairly, regardless of your personal opinions and ensure that the will of the Federal legislature is made real across the country and in your area of responsibility?

Judge KOH. Absolutely.

Senator OSSOFF. Thank you, Judge Koh. Thank you, Mr. Chairman. I yield back.

Chair DURBIN. Thanks, Senator Ossoff. Senator Blackburn.

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

Judge KOH. Thank you.

Senator BLACKBURN. We appreciate your being here. Do you believe it is the role of a judge to be impartial and objective?

Judge KOH. Absolutely.

Senator BLACKBURN. Thank you. Let me ask you about something that you wrote as you were a law student. And you wrote it for Harvard Women's Law Journal, and I'm quoting you, "Minority judges still need to maintain the disguise of objectivity or else face

challenges to their decisions. Yes, a minority judge is going to identify with a minority party's experiences, but she can't admit this. We've got to get more clever and say, 'Look, we're just as neutral as any 60-year-old white man.' Tactically, what's more pragmatic, to pretend we're objective or to deconstruct objectivity itself?"

When you sit here today and tell us that you're going to be objective and impartial, is that a disguise?

Judge KOH. Absolutely not. And I have 14 years of a record that you can see from 3,250-plus opinions on the Federal court, thousands of opinions on the State court, 271 trials, I have been fair, and I have been impartial. And I have taken my judicial oath extremely seriously to impartially discharge my duties.

Senator BLACKBURN. Do you still hold that opinion?

Judge KOH. Absolutely not. Absolutely not.

Senator BLACKBURN. You do not hold that opinion that you wrote——

Judge KOH. No.

Senator BLACKBURN [continuing]. In the Harvard Women's Law Review?

Ms. KOH. It was—it was 31 years ago. I was a 1L. It was the fall semester of my first year of law school. I completely disagree with that statement.

Senator BLACKBURN. Okay.

Judge KOH. The rule of law requires, demands, the parties are entitled to impartiality.

Senator BLACKBURN. So, you think, your statement today would be that you do not think there is any time or occasion where a minority judge should conceal their feelings and disguise their feelings or their approaches—that they should be impartial?

Judge KOH. Absolutely. Every—every judge must be impartial. I completely agree with that. And personal—I completely agree with that.

Senator BLACKBURN. It's of concern to us when we read statements and then someone goes to the bench, and they make decisions that are counter to statements that they have made in front of us. And I'm sure you can identify with what that frustration is. So as I read those statements that you had given when you were there at Harvard Law, that, that was an issue of concern for me. And I'm sure you can understand why it would be.

Judge KOH. I completely understand.

Senator BLACKBURN. Or why it would cause question for individuals that were coming before you.

Judge KOH. I completely understand.

Senator BLACKBURN. Okay.

Judge KOH. I disagree with that statement, and I think my record has shown that I disagree with that statement.

Senator BLACKBURN. And what would you say is your judicial philosophy? Are you an originalist? How would you classify yourself?

Judge KOH. So, I look at the text first. I look for any Supreme Court precedent. I look for any ninth circuit precedent. And I look at those opinions to see what methods of interpretation did they use. And in cases like *Heller*, cases like *Crawford*, they use

originalism. And I follow the higher courts in what either cannons of construction or what methods of interpretation to use.

Senator BLACKBURN. Okay. And do you think it is ever proper for a judge, someone in your position, to indulge their policy preferences in determining what the law means?

Judge KOH. No. No.

Senator BLACKBURN. Okay. Thank you. Looks like I'm about out, Mr. Chairman. I will yield back the balance of my time. And just for the record, my clock doesn't work.

Chair DURBIN. Senator, you have 19 seconds left, and we'll credit it to you on the next witness. Okay?

Senator BLACKBURN. That works.

Chair DURBIN. Thank you. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair. Is that with interest accrued, or no interest?

[Laughter.]

Senator PADILLA. Before I ask my questions, I want to take a moment to push back against some of the ridiculous claims that we've heard from the other side this morning, particularly that Judge Koh's decision in the *Tandon* case was either somehow hostile to people of faith, or a radical departure from the law.

Colleagues, I invite you to read Judge Koh's well-reasoned and detailed opinion in the *Tandon* case. If you read it, you'll see that Judge Koh considered and cited precedent from the Supreme Court, the sixth circuit, and the ninth circuit, consistent with the response she just made to questions from Senator Blackburn.

Fact, when her decision was appealed to the ninth circuit, two judges, including a Bush-appointee and a Trump-appointee agreed with her. And fact, the Supreme Court—at the Supreme Court, Chief Justice Roberts agreed that the Supreme Court did not need to displace Judge Koh and the ninth circuit's decisions.

So, this idea that Judge Koh's opinion was somehow outside of the mainstream is just plain wrong. Likewise, the idea that Judge Koh, a person of faith herself, she shared that with us today, that she is hostile to people of faith is simply ridiculous.

Now with that said, Judge Koh, is there anything else? I know there's been a lot of discussion about your decision in the *Tandon* case. Is there anything else that you'd like to share with the Committee and anything you would like to explain further about your decision here?

Judge KOH. Well, just that at the time, I was basing my decision on the facts in the record and the precedent that existed at the time. And I was following the ninth circuit's analysis of looking at risk transmission evidence, and looking at the sixth circuit decision, which was the only one that existed at the time that was not calling out houses of worship and calling out religious exercise specifically. And the Supreme Court did not enjoin that decision that said it's a neutral and generally applicable rule if it applies to public schools, private schools, religious schools. It doesn't matter because it's generally applicable and it's neutral. And that's the precedent that existed at the time. I was following ninth circuit precedent.

I understand that subsequent to my decision—and my decision was affirmed by the ninth circuit. Subsequent to my decision that

I relied on in the ninth circuit, the Supreme Court ultimately reversed that decision. But at the time, I was following the law.

Senator PADILLA. Thank you. And as you shared, you are a person of faith yourself. So can you just clarify for the record, are you hostile to the constitutional rights of people of faith, as some of my colleagues on the other side seem to be implying?

Judge KOH. Not at all. I understand that the right to religious liberty is one of the most important and fundamental rights. It's one of the foundations upon which this Nation was built.

Senator PADILLA. Thank you. And in the time remaining, I do want to sort of take a step back away from this case in particular, and acknowledge what several of my colleagues have acknowledged, and that's your remarkably low reversal rate. I know several have mentioned it today. Just remind us of the numbers, over the course of more than 3,200 opinions, at 270-plus trials, you've had to rule on everything from mundane discovery requests to blockbuster questions regarding intellectual property. Is there a particular approach or philosophy you take to ruling on such a wide array of cases?

Judge KOH. I try to do my best to look at the record that is before me, to decide only the limited issues that are before me, and to apply the law fairly, and to issue opinions that lay out in full, in full comprehensive fashion what my ruling is, what my reasoning is, why I'm coming out this way so the parties understand how I've reached that decision, so the appellate courts can see how I've come to a conclusion.

Senator PADILLA. Thank you. And if I may, Mr. Chair, just to, in closing, a question more on the personal side. By all accounts, you've already had a tremendously successful judicial career. You're one of the most respected judges in the Northern District of California and have the opportunity to preside over consequential and challenging cases in this capacity. On account of your prior confirmation to be a district court judge, you already have life tenure on the Federal court. So put another way, you really don't have to be here today. So let me ask you, why are you here? Why do you choose to be here? Why did you choose to subject yourself to yet another confirmation hearing for this opportunity to serve on the ninth circuit?

Judge KOH. Let me just say that the job I currently have is an amazing job, and I have nothing but the utmost respect for my colleagues. Trial court judges have frankly the least resources in the system and have very large volumes with tight time constraints. So this is a job that I love. But if confirmed, I would love to contribute to providing clear guidance to trial courts. I think the perspective of someone who's been sort of on the ground, trying to apply it in vary quick trials and very short timeframe compressed time periods is helpful. And I think that I would really love, also, to serve a role modeling function beyond my district, beyond my State, and to go meet law students, go meet young lawyers all over the ninth circuit. That is something that I really look forward to.

Senator PADILLA. Thank you very much. Thank you, Mr. Chair.

Chair DURBIN. Thanks, Senator Padilla. Judge Koh, thank you very much. It would be an interesting exercise to ask all of the young people in the room that have witnessed this hearing for their

impressions, but we have some other things we have to do. But there is a lesson here. Something that you may write today, or text today, you may have to answer to before the Senate Judiciary Committee 31 years from now, so be careful. But thank you for your patience in this hearing and for your remarkable career in the law. You've done an outstanding job.

And I salute your family, including the future quarterback for the Los Angeles Chargers——

Judge KOH. 49ers, excuse me.

Chair DURBIN. 49ers, Mateo. I wish you well. And Rhea, thank you so much for your patience. And to your husband as well. So thank you.

If you would please give us a chance to set up now for the second panel. I appreciate it.

Judge KOH. Thank you so much. Thank you to everyone.

[Pause.]

Senator KLOBUCHAR [presiding]. Okay. Maybe the second panel wants to sit down quick, and then we'll swear you in. I know, okay. I was just watching Mr. Kanter do the secret handshake with his kids. Maybe when that's done, we can all learn it.

I want to welcome the nominees to the second panel, which include Judge Beckering, Judge Kumar, Mr. Bonilla, Ms. Lerner, and Mr. Kanter. It is truly a pleasure to welcome you today. We have a long day of hearings. You're somehow sandwiched in the middle over lunch. But we're very glad for your patience and thank you.

If the witnesses now could please stand and raise your right hand?

[Witnesses are sworn in.]

Senator KLOBUCHAR. Thank you. I'll now recognize the witnesses for 5 minutes. The nominees for 5 minutes of testimony each. We start with Judge Beckering.

STATEMENT OF JANE M. BECKERING,
NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Judge BECKERING. Well, if the clock on the wall is accurate, I would like to say good afternoon. I would like to begin by thanking Senator Klobuchar for presiding today. I'd like to thank Senators Durbin and Ranking Member Grassley for scheduling this hearing. And I'd like to thank the other Senators for participating in this advice and consent process. I am grateful to my home State Senators, Senators Stabenow and Peters, for recommending me to the President. And I am deeply humbled by their kind words this morning. I am also thankful to President Biden for the tremendous honor of this nomination.

I have several family members here today who I would like to introduce, who are sitting behind me. First and foremost, my husband, Ray Beckering. He is an assistant United States attorney. He has been my biggest cheerleader and source of unwavering support for the past 30 years of our marriage. We have three adult children: Marley has come from Chicago, Illinois; Katie, from Charlotte, North Carolina; and Ray, from Ann Arbor, Michigan. I could not ask for three kinder, more considerate, or more loving children. They are my greatest accomplishment, hands down.

My parents are also here: John C. and Sheila Buchanan. They are both wonderful parents, and impeccable role models. And my father is the reason that I became a lawyer. And finally, my brother and best friend, Rob Buchanan, who also caught the bug and became a lawyer, is here as well, having just come off a year of service to the State of Michigan as bar president.

Rob and I became lawyers because we were mentored from a very young age by two of the world's finest trial lawyers, my father, John C. Buchanan, and my late grandfather, William B. Buchanan. They believe that America's system of justice is the finest in the world, and that to uphold it tenants as a lawyer or a judge is among the highest of callings. They taught us that civility, integrity, and respect for others are the hallmark trademarks of our profession. I am deeply humbled to appear before you today by honoring for this potential opportunity to carry on my family's commitment to the stewardship of our justice system.

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

Senator KLOBUCHAR. Thank you so much. Next up, Judge Kumar.

STATEMENT OF SHALINA D. KUMAR, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE OF THE EASTERN DISTRICT OF MICHIGAN

Judge KUMAR. Good afternoon. I'd like to thank Chairman Durbin and Ranking Member Grassley for scheduling this hearing today. And thank you, Senator Klobuchar for agreeing to preside over this hearing. I'd like to thank President Biden for nominating me to this position. It is truly a great honor, and I am deeply humbled by the faith he has placed in me. I would like to thank Senator Stabenow and Senator Peters for recommending me to the President, and for their lovely words of support today.

I would like to acknowledge my mother, Margaret Kumar, who I unfortunately lost last year. She was my greatest champion, and I know today she would be very proud. I have zero doubt she is here with me today, and knowing my mother, probably orchestrating the whole thing.

I'd like to thank my father, Dr. Krishna Kumar, who came to this country from India to pursue his own American Dream. He always taught us to believe in ourselves and know that we could be whatever we wanted to be in life.

I'd like to acknowledge my sister, Kala Kumar, and brother-in-law, Ken Shepherd, and thank them for their love and support. And all my aunts, uncles, and cousins in Michigan, Maryland, Missouri, and India. I know they are all very excited about this nomination.

I would also like to acknowledge my high school government teacher, Paul Dane, who is responsible for my initial interest in government and the law, and he has continued to support me in my career throughout my life.

I would be remiss if I did not thank and acknowledge my staff, Amanda, Bridget, Lindsey, and James. Without their hard work, I could never do my job. I would like to thank all my friends and colleagues for their love and support throughout this process, including those here with me today, Jason Turkish and Eve Hill.

I thank all the Senators here today, and I'm happy to answer any questions.

Senator KLOBUCHAR. Thank you. And before we go over to Mr. Bonilla, I will tell you that both your Michigan Senators have approached me about this hearing several times, and if I mess this up, I don't know what's going to happen to me. I'm never going to be able to go in your State. So, congratulations to both of you. Mr. Bonilla.

STATEMENT OF ARMANDO O. BONILLA,
NOMINEE TO SERVE AS JUDGE OF THE
UNITED STATES COURT OF FEDERAL CLAIMS

Mr. BONILLA. Thank you, Senator Klobuchar. Thank you, Chairman Durbin, for your kind introduction. And Ranking Member Grassley, for your kind words earlier this morning, and in 2014, when I was initially nominated. I'd like to thank the Chairman and the Ranking Member for scheduling this hearing. And to Members of the Committee for considering our nominations. I would also like to thank President Biden for the honor of renominating me to serve as a judge on the court where I learned to practice law and tried my first case 25 years ago.

With me today are my wife of 17 years. We celebrated our wedding anniversary this past weekend, Dr. Jacqueline Wright Bonilla. Our daughter, Bryson, and our son, Armond, who goes by AJ. It is with their unconditional love and support that I continue chasing this improbable professional dream.

Seated with my family are our dearest friends and the godparents to our children, Colleen Conroy, and her spouse, Karen Fisher, who had the honor of serving on Senator Wyden's staff, and Amy Brown Dolittle.

Watching from home, after I asked and then begged them not to travel during these extraordinary times, are my mother, Alena Bonilla, my sister, Barbara, and her partner, Bob Feldman. And my in-laws, Joy Adams and Paul and Lenora Wright.

Sadly, my father passed away 25 years ago, almost to the day and can only be here in spirit. He was a man who quit high school to join the Marines to support his mother and spent his life working two and three jobs to make sure that my dreams and my sister's dreams were not limited by our state in life. He and my mother worked tirelessly and raised me to truly believe that a kid who grows up cleaning law offices at night with his parents could someday be nominated by the President and considered for the Federal bench. It is because of their sacrifices and their example that I am living the American Dream.

Finally, I would like to thank my former colleagues at the Department of Justice for their service to their Nation, this Nation, and my colleagues at Capital One. Throughout my career, I have been honored and privileged to be surrounded by very kind people, generous with their time, and their support, and their many talents.

I'd like to thank the Committee, again, for considering our nominations, and I look forward to answering your questions.

Senator KLOBUCHAR. Thank you very much. Next up, Ms. Lerner.

STATEMENT OF CAROLYN LERNER, NOMINEE TO SERVE AS JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS

Ms. LERNER. Thank you, Senator Klobuchar. Thank you for presiding over this hearing. I'd also like to thank Chairman Durbin, Ranking Member Grassley, and the other Members of this Committee, and the staff for scheduling this hearing. I had the privilege of working closely with several Members of this Committee during my prior role as head of the U.S. Office of Special Counsel. Senator Grassley, you were one of them. And it's an honor to appear before you again today. I also want to thank President Biden for nominating me. I'm truly grateful and humbled.

With me is my husband of 30 years, Dwight Bostwick, and our son, Ben. Our daughter, Anna, is a student at Stanford Law School, so unfortunately, she couldn't be here, but I know she's watching by video. I am so grateful to each of them for their love and their support. Many other family members and friends are watching by video, as well, and I want to thank and acknowledge them as well.

I would not be here but for the two people whose influence led me to pursue a career in the law. My mother and father would have treasured this day. They were the children of immigrants who came to this country to escape anti-Semitism and depression. My grandfather had been jailed in his country for speaking out against the government. My parents taught me to appreciate the freedoms we enjoy in the United States, and to give back through public service.

I began my career in Michigan, where I grew up, as a law clerk to Chief U.S. District Court Judge Julian Able Cook, Jr. Judge Cook treated all those who appeared before him with kindness, dignity, and respect. He encouraged me to try and become a judge, and I so wish he could have lived to see this day. It will be his example that emulate if I am fortunate enough to be confirmed to a seat on the Court of Federal Claims.

Thank you, and I look forward to your questions.

Senator KLOBUCHAR. Thank you very much. Mr. Kanter.

STATEMENT OF JONATHAN KANTER, NOMINEE TO SERVE AS ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION

Mr. KANTER. Thank you, Senator Klobuchar, for Chairing today's hearing. Thank you to Chair Durbin, Ranking Member Grassley, Members of the Judiciary Committee for giving me the opportunity to be here today. I'd like to thank Senator Klobuchar for that warm introduction and for her inspirational and transformative leadership, promoting sound competition policy and effective antitrust enforcement.

Senator KLOBUCHAR. Hopefully you didn't lose some votes over that one. Thank you.

Mr. KANTER. So many family, friends, and colleagues, mentors have provided so much support and encourage throughout this process, and my entire career, and I'm just so grateful to all of them.

I'm particularly thankful for my family here today. I love them so much. My wife, Lisa, my daughter, Abigail, my son, Ben—Benjamin, my mother and father, Leslie and Allen Kanter, my sister, Beth Kanter, and all of my family who are watching at home. I am so grateful.

In 1996, following my first year of law school, I took a long drive from Saint Louis, Missouri, to Washington, DC, to begin a summer internship at the Federal Trade Commission's Bureau of Competition. At the time, I could never hardly imagine spending the next 25 years steeped in antitrust law, let alone sitting before you today. But I'm here precisely because others did imagine a moment like this was possible.

I think about my grandfather, Myer Kanter. As just a baby, he came to this country with his family in 1938. They came here in pursuit of a better life and opportunity not just for themselves, but for future generations. At first, life was hard for my grandfather. He had to drop out of school at a young age to work and support his family. He would eventually become a plumber, where he would work long and hard hours, but with an unbounded sense of optimism and a deep love of his country.

Sitting here today, I can think about it driving with my grandfather in his powder blue Chevy. I was sitting in the back seat, and he would beam with pride as we passed by a school where he was responsible for installing the plumbing. I remember vividly my grandfather telling my sister and me about the proudest day of his life, April 26, 1938, the day he became a U.S. citizen.

He not only believed in the American Dream, but he lived it. He provided a whole range of opportunities that he never had to my father. My father had the opportunity to attend college, study music, eventually become an elementary school music teacher, where he married my mother, who devoted her career after similar upbringing to be an elementary school teacher. And my parents, in turn, provided me with a whole range of opportunities that they never had as I grew up in Queens, New York. I attended law school and eventually had the opportunity to build a successful career in the law.

So many of us have a similar story. We've heard inspirational stories like this already today. The American Dream is real, without a doubt, but we can't take it for granted. Liberty depends on opportunity, and opportunity depends on free, fair, competitive markets. And the antitrust laws play a vital role in preserving these opportunities.

I have here with me today my grandfather's original certificate of citizenship. It's my way of him being here with me for this important milestone in my life. If confirmed, I plan to take inspiration from my grandfather, and keep this certificate at my desk at the Department of Justice as a reminder of his optimism and the importance of fighting to preserve opportunity, not just for current generations, but for future generations.

I'm truly humbled to be here today. If confirmed, it would be an honor of a lifetime to work with Attorney General Garland, the leadership at the Department of Justice, and the so many talented, hardworking, exceptional people at the Antitrust Division, many of whom I've had the privilege of knowing for two decades.

I am humbled and grateful that President Biden has nominated me—nominated me to serve as Assistant Attorney General for the United States Department of Justice. I'm honored to be with you today, and I look forward to answering your questions.

Senator KLOBUCHAR. Very good. I'm going to defer here to the Ranking Member and allow him to go first. So go ahead. Thank you.

Senator GRASSLEY. Thank you. Mr. Bonilla, your family has an impressive story. Your mother, a Cuban immigrant, fled the Communist Revolution as a young woman. And like many Cubans, came here to build a new, better life. Your Uncle Mario, apparently disappeared, trying to help other Cuban exiles. This summer, we've seen the Cuban people bravely protesting against the communist dictatorship.

Tell me a little bit more about the oppression that your family faced in Cuba, and the opportunities they were able to find with other Cuban exiles in America.

Mr. BONILLA. Thank you, Senator Grassley. As you pointed out, my mother, when she was 21 years old, left Havana with a suitcase and a dream. She came to a country where the land was foreign, as was the language. She, and her mother, and her sister moved to New York, and had to leave her brother, Mario, behind in Cuba. Eventually, he did come to this country and settled in Miami. And every year, my family would drive our Chevy Nova down 95 with our trailer to visit them in Hialeah, where we would spend a week with our extended family.

My Uncle Mario was a private pilot, and my grandmother saved her money and bought him a plane. And he would fly back and forth, trying to rescue other Cubans out of that country, who were suffering.

Senator GRASSLEY. Can I interrupt you?

Mr. BONILLA. Yes, sir.

Senator GRASSLEY. Did they ever refer to the oppression they had in Cuba?

Mr. BONILLA. My mother tried to paint a good life. My sister and I have pulled the pieces apart and realized that she had a very hard life. My father—grandfather, my mother's father, left home in search of a better life and abandoned the family. And so, they had to struggle on their own.

And so, it was things like you couldn't paint your house because then the communist government would know that you had money—extra money. So it was things like that. She doesn't like to talk about it because she wants us to appreciate what we could have and what she endured.

Senator GRASSLEY. Okay. Mr. Kanter, when we met last week, I mentioned my concern about concentration in anti-competitive practices in farming, especially corporate consolidation in the agriculture industry, harmful to the family farmers.

Recently, I've been particularly concerned about competition problems and lack of transparency in the cattle pricing. Earlier this year, I wrote a letter, urging the Justice Department to investigate the control that large meat packers have over the meat processing market, and whether this control violates antitrust laws. So as head of the Justice Department's Antitrust Division, what action

would you take to combat anticompetitive marketing behavior that hurts farmers and raises consumer prices at the grocery store?

Mr. KANTER. Thank you, Senator, and thank you for raising awareness to this critically important issue. Our food supply, our agriculture, our farmers are critical to the health of our economy and to a healthy Nation. And so, this has to be a high priority when enforcing the antitrust laws. Its vigorous antitrust enforcement in the area of agriculture is absolutely essential in my view to any effective antitrust enforcement program.

Senator GRASSLEY. I hope you'll work with the—this isn't a question. I hope you'll work with the Department of Agriculture to make sure that the Packers and Stockyards Act is fully used, and even encourage that using if you have to.

I'll get on to the next question, the rising cost of prescription drugs. That concerns my Iowans all the time at my county meetings. The Justice Department plays a critical role in ensuring that drug companies don't engage in anticompetitive practices or monopolistic behavior. What steps would you take if you're confirmed to enforce the antitrust laws in this space and ensure that both brand name and generic drug companies play by the rules?

Mr. KANTER. These are critical issues that affect Americans every day. Access to affordable medicine, healthcare, cannot be more important. And so, the antitrust laws play an important role in keeping prices down, allowing for access to important care so that people can be healthy and live. And so antitrust enforcement here, as well, is absolutely critical. And if confirmed, I intend to work with the Department of Justice to ensure that we have vigorous and responsive antitrust inform in this area.

Senator GRASSLEY. Congratulations to all of you.

Mr. KANTER. Thank you.

Senator KLOBUCHAR. Very good. Thank you so much, Senator Grassley. In fact, I'll focus a bit, I say, to the other panelists, antitrust is my Subcommittee and a number of other Senators here have been working on it as well. Senator Blumenthal, Senator Whitehouse, and we also have, of course, Ranking Member Grassley, who has been such a leader.

Picking up where he left off, Mr. Kanter. Senator Grassley and I have a bipartisan bill, of course, the Merger Filing Fee Modernization Act, which would update the merger fees, raising $135 million in additional revenue. We've worked this out together so that the money would come off the biggest mergers and not off of small companies. In fact, we've reduced those fees. Maybe some small companies in Iowa, for instance, that might want to merge. So we've worked that out. It's actually passed the Senate. It's passed the U.S. Senate. I think it would help both Agencies to, given that they're a shadow of their former selves, even from during the Reagan administration, and yet they're being expected to take on the biggest companies the world has ever known.

I know that you voiced support for the Agency funding when you testified before the Antitrust Subcommittee when Senator Lee, who's just arrived, and I invited you to testify. As Assistant Attorney General, what would you do with the additional funding?

Mr. KANTER. Thank you, Senator. Adequate funding is essential for effective antitrust enforcement. I know the Department of Jus-

tice has weighed in favorably in support of the legislation, and I certainly support any effort to provide the appropriate level of funding to the Department of Justice Antitrust Division.

I think there's a great deal to do. We've heard about some of the issues today in agriculture and in healthcare. And there a wide range of other areas where the Antitrust Division needs to be the cop on the beat in terms of ensuring that companies are complying with the antitrust laws. And so, I think some of the things that I would recommend, and that are important to me, include more trial attorneys and more substantive expertise to complement the already tremendously talented people in the Antitrust Division.

Senator KLOBUCHAR. Okay. Very good. Yesterday, we had incredible testimony, thanks to Senator Blumenthal, Senator Blackburn, and others on the Committee from a whistleblower at Facebook. And as a former law enforcer, I know that effective enforcement often depends on the courage of ordinary people who provide relevant information to enable the Government to build a case.

This week, as I said, we can see what happens when we have someone coming forward. This is something Senator Grassley cares very much about. Given that whistleblowers who assist the Government in civil antitrust cases may face threats of retaliation, could there be benefits to extending the protections offered to whistleblowers assisting in criminal cases to whistleblowers assisting in civil cases, Mr. Kanter?

Mr. KANTER. It is extremely important that antitrust enforcement authorities have access to individuals with relevant information. And monopolies have the ability to intimidate even other big companies, let alone individuals. And so, as a general matter, I am very supportive of any effort to ensure that the enforcement authorities have access to the relevant information and the relevant witnesses.

Senator KLOBUCHAR. Very good. Some mergers are just too anticompetitive to fix. In my mind, that was the T-Mobile/Sprint merger, which unfortunately got settled over significant objections. I'm not going to ask you to comment on individual mergers that may be coming before you, but could you describe the approach you plan to take in assessing whether the Antitrust Division should accept settlements in merger cases? And what will you do to ensure that the Division does settle a merger case that the merged company actually complies with whatever consent decree that you reach?

Mr. KANTER. I look forward to working with my colleagues—future, hopefully, colleagues at the Department of Justice to enforce the law vigorously. And that means adhering to the text of Section VII of the Clayton Act regarding mergers. And to the extent that remedies are on the table, the guiding principle is they have to work. If the remedies don't work, then you still have a violation of the law. And so, each case should be evaluated on a case-by-case basis. But it's important to make sure that we're addressing anticompetitive mergers.

Senator KLOBUCHAR. Okay. Very good. I may come back with some other questions of everyone. So Senator Lee, if you don't mind, I'm going to go to Senator Whitehouse because I had allowed Senator Grassley to go first, and then you'll be next. Senator Whitehouse.

Senator WHITEHOUSE. Thanks, Senator Klobuchar. Mr. Kanter, welcome back to the Committee.

Mr. KANTER. Thank you.

Senator WHITEHOUSE. It is—as you know, we have been making inquiries from the Committee on the conduct of your predecessor, Mr. Delrahim, regarding the investigative letter that was sent to the auto companies, which appears to have been undertaken without the proper procedural steps dictated by the Department of Justice internal guidelines and without proper substantive support in the law. I'm going to ask you to confirm that you will help support our inquiry, and specifically if an antitrust investigation were announced without the proper procedural steps having been undertaken, and without proper substantive legal support, and perhaps for the purpose of applying a political punishment, would that be a proper area for this Committee to make inquiries?

Mr. KANTER. First and foremost, Senator, I think there is—I have tremendous respect for the oversight function of this Committee and Congress, and I look forward, with the calling of my colleagues, working cooperatively.

Senator WHITEHOUSE. That set of facts would be an appropriate justification or predicate for Committee inquiry, would it not?

Mr. KANTER. I think Congress has the right to ask questions, absolutely. And—

Senator WHITEHOUSE. What if a White House political pressure were the motive, would that also be an appropriate area for congressional inquiry?

Mr. KANTER. Questions—enforcement decisions and investigations should be based on the facts and the law, period, full stop.

Senator WHITEHOUSE. So I'm taking a—I believe the Inspector General is investigating this matter. And I understand that we don't want to interfere with an Inspector General inquiry, whatever it is that's going on. But at the same time, the Inspector General's scope can be viewed as limited to what takes place in the Department.

And I offer for you the example that we all lived through, the investigation into the U.S. attorney firings in which OPR and the Office of Inspector General joined together to try to get to the bottom of what took place there. And when their investigation led to the White House, the White House dropped the door, slammed it shut, and said, "No info. No interviews. No nothing."

Unfortunately, Attorney General Mukasey tolerated that, but that is the precedent, really, that the Department has displayed when an internal investigation by the Inspector General leads to the White House. That it stops as soon as the White House says that it stops. So that means, that to me, that the Inspector General's investigation may be very complete within its bounds, but it does have bounds. And this Committee can look beyond those bounds and can try to figure out what happened. And I want your commitment that you will support us in that effort, and not just say, "Oh, well, the Inspector General is looking into that. That's all we need to do. The Committee is not—I'm not going to support the Committee's inquiries."

Mr. KANTER. I have tremendous respect and deference to Congress' role in its oversight function. And if confirmed, I certainly

commit to working alongside colleagues at the Department of Justice, including the Office of Legislative Affairs to ensure that we are providing Congress with the information it needs, as appropriate.

Senator WHITEHOUSE. The last piece here is that there are rules that exist for contacts between the White House and the Department of Justice. Those rules have been the subject of Committee inquiries before. I suspect they will probably be the subject of Committee inquiries into the future as well. It's been a relatively long-standing policy with a few very embarrassing hiccups in it that have caused the Department of Justice to revert to the long-standing policy. But clearly, if there were violations of the Department of Justice and White House Counsel policy regarding contacts between the White House and the Department of Justice, that would be a proper subject for this Committee's oversight inquiries. Correct?

Mr. KANTER. Certainly, Senator. I think the operation of the Antitrust Division and Department of Justice—I only can speak to antitrust, but I'm certain Congress has an important oversight function.

Senator WHITEHOUSE. Great. Well, we look forward to getting to the bottom of what took place in this unfortunate episode at the Department. Thank you, Chairman.

Senator KLOBUCHAR. Very good. Thank you, Senator Whitehouse. We now turn to Senator Lee, who is going to ask the four judicial nominees a series of difficult antitrust questions. Is that correct?

Senator LEE. Thank you, Madam Chair. Mr. Kanter, I would like to start with you, if that's all right. In the first 9 months of this administration, we've seen some disturbing trends in antitrust law. And some of those trends were the focus of a letter that I sent recently, along with Senator Grassley, and Representatives Jordan and Buck to both the Antitrust Division at the Department of Justice, and to the FTC, noting several recent developments that seem to reflect kind of divergence between these two antitrust enforcement bodies. Divergences that I can't trace or justify based on any provision of sound public policy or statute.

For example, we've seen the FTC withdraw its approval for the 2020 vertical merger guidelines while the Department of Justice has retained that same scheme. We've also seen reports indicating that the FTC is asking merging parties about their environmental, social, and governance, or ESG policies.

Tell me, do you, if you're confirmed to this position to run the Antitrust Division at the Department of Justice, do you intend to ask the subject of antitrust investigations about their ESG policies?

Mr. KANTER. The purpose of antitrust laws is to protect competition. And so, in my experience and my view, questions that are relevant to protecting competition are the kinds of questions that antitrust enforcement authorities should ask.

Senator LEE. And should they be asked where ESG policies pose no competition-related implications to the merger?

Mr. KANTER. I don't see situations where ESG policies that are unrelated to competitive issues are relevant to antitrust, unfortunately.

Senator LEE. As to the existence of these divergences, don't they just further underscore the problem that we have created with having two enforcement agencies charged with enforcing the same set of antitrust laws?

Mr. KANTER. I defer to Congress with respect to the creation of agencies. If confirmed, my focus will be to work with the Department of Justice to enforce the laws as Congress has written them, and to make sure that we're protecting competition in the competitive process.

Senator LEE. Okay. Let's talk about the Consumer Welfare Standard for a moment. You've criticized the standard in the past. There was a speech you gave, I believe, in 2017, at a Federalist Society Conference in which you indicated that economists, quote, "bring values and ideas that are often very subjective." And you compared employing the Consumer Welfare Standard to judicial activism.

Do you agree that the Consumer Welfare Standard could encompass many factors beyond price, factors that we both agree are important, including things like quality, and innovation, and consumer choice?

Mr. KANTER. Yes. I do.

Senator LEE. It sounds like the problem may not be with the Consumer Welfare Standard itself, but rather with how it's used. And it sounds like your problem, in particular, that you were highlighting in your 2017 speech might be in reference to the way judges might have used it in order to—in such a way that involves entertaining speculative economic analysis. Would you agree with that?

Mr. KANTER. That's a fair characterization. Yes.

Senator LEE. Now, you've advocated for greater consideration of political values in the application of our antitrust laws. How would you define political values in that context? And how would you employ those here?

Mr. KANTER. Let me start by saying political influence should not be a relevant in determining whether to initiate or bring in antitrust enforcement actions. The kinds of values, you know, are around protecting competition. And competition can yield a wide range of benefits, including protecting the free flow of information in a democratic society, which is critical to our political discourse.

Senator LEE. Those value judgments, insofar as you're basically talking about policy choices. Is it proper for individuals who aren't elected to be making those policy choices——

Mr. KANTER. Yes. So I——

Senator LEE [continuing]. Either in the case of a regulator, an enforcer, or a judge?

Mr. KANTER. Right. So I think, when it comes to antitrust, which is the area I know and love, the focus is on preserving competition. And individual decisions regarding enforcement actions should be based on whether there are violations of the law, as written by Congress and interpreted by courts. And individual enforcement actions are assessed on a case-by-case basis.

Senator LEE. Madam Chair, I've got one other question that's really tiny. I promise.

Senator KLOBUCHAR. Sure. Okay.

Senator LEE. On the Consumer Welfare Standard, would you agree that once we separate out the concern that we discussed a minute ago, you can separate out, the Consumer Welfare Standard can be and often has been used in such a way as to focus the antitrust inquiry so as to keep it attentive to what matters which is competition—protecting competition rather than competitors or some other social policy?

Mr. KANTER. My view is that the antitrust laws exist to protect competition. I believe that's how Congress has written the law, and I think the mandate of antitrust enforcement authorities is to enforce the law and protect competition and the competitive process.

Senator LEE. Thank you, Mr. Kanter. Thanks, Madam Chair.

Senator KLOBUCHAR. Thank you very much, Senator Lee. Next up, Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Madam Chair. And thanks for your leadership of the Antitrust Committee, along with the Ranking Member, Senator Lee, which I know will be very active, and hope for your cooperation with us, Mr. Kanter.

I'd like to congratulate and thank all of the nominees here today. Your personal stories are impressive and inspiring, and your commitment to the rule of law and justice is so important to our democracy, as you well know. And as a Member of this Committee, I've said countless times that our judiciary is often the face and voice of justice for many Americans. It's what they see and hear when they think of justice. So, your position of trust is immensely important not only to those of us who have spent a lot of time in the courts, but also to ordinary Americans. So thank you.

Mr. Kanter, I want to talk a little about interoperability. As you well know, Google and Facebook have tremendous dominance, and they maintain it through moated castles, which in effect, trap their users and reinforce their powerful network of facts. They trap their users, in effect, on their platforms, and for startups, if you can't reach those users and their friends, you're doomed, no matter how much better your product is. So they are barriers to competition.

Congress has used interoperability and nondiscrimination as a tool to foster competition again, and again, and again for nearly a century. It's one of the most proconsumer and promarket steps that can be taken. It is now hard for us to imagine or to think back to the day when you were unable to port your telephone number to a competitive carrier. And I think there's a consensus that we need interoperability and portability requirements for the Big Tech platforms to break down these walls. There's a ton of conversation about breaking up these companies, which in some instances I do support, but a more modest and potentially hugely effective step would be to enforce interoperability and portability.

Senator Warner and I introduced the Access Act, which would require companies like Facebook and Google to offer interoperable access for competition and consumers. This bill would empower companies that want to compete with Big Tech, for example to offer better privacy, safer environments for children, and other proconsumer benefits. They would actually be competition about who can better protect children, which is lacking now in part because of the lack of interoperability.

So, I would like your commitment that, if confirmed, you will be working with my office to advance the Access Act.

Mr. KANTER. It would be—I don't want to get out ahead of the Department of Justice by weighing in on specific legislation. But if confirmed, I look forward to working with you, your staff, and the Committee, as appropriate, along with others at the Department of Justice to ensure that we have effective antitrust enforcement and providing the appropriate input with respect to sound competition policy.

Senator BLUMENTHAL. Do you consider interoperability an important principle and potentially effective in protecting competition?

Mr. KANTER. Yes. I do. I think the facts depend—the remedy—as I was saying earlier, first and foremost, remedies have to work. And so, I think it should be assessed on a case-by-case basis. But interoperability is obviously a critical principle.

Senator BLUMENTHAL. Are you familiar with the effects of lack of interoperability in Big Tech?

Mr. KANTER. Without speaking regarding any specific company or case that might be pending, yes. I am very familiar with the—with interoperability issues, with interfaces, and extent to which they can, contribute to the kinds of competitive moats that you were referring to earlier.

Senator BLUMENTHAL. Let me ask on a different topic, if you could give a brief answer, because I only have 30 seconds left. It's a big topic, and if you want to supplement your answer in writing, that's fine.

Could you talk a little bit about the impact of protecting competition on communities of color and ensuring that communities of color are able to earn a fair wage and enter businesses?

Mr. KANTER. Yes, Senator. So antitrust is about promoting competition, which is essential to preserving a healthy economy that works for everybody. And dominant companies have the ability to exploit their monopoly power to the detriment of Americans in so many different ways, whether it's farmers, it's wage workers, or others. And I do think a critical mission of the antitrust law is to protect competition for people in the workplace, to ensure that thriving competitive markets leads to adequate compensation.

Senator BLUMENTHAL. Thank you. Thank you, all, for your service. Thanks, Madam Chair.

Senator KLOBUCHAR. Thank you very much, Senator Blumenthal. Next up, Senator Tillis.

Senator TILLIS. Thank you, Madam Chair. Congratulations to all of you on your nominations. Thank you for being here. And you all should probably thank Mr. Kanter, because I understand he's getting the majority of the questions. And I'm going to keep the streak alive.

Mr. Kanter, I also—I want to thank you. You and my staff were very complimentary of the time that you spent with them on a variety of questions, preceding the hearing.

I want to get to a couple of things, and I'll submit the rest for the record if time does not allow. But the Antitrust Division under the previous administration really took a view that the policy of patent laws and antitrust laws were aligned with the mutual aim of fostering dynamic competition in keeping our lead in innovation,

economy moving. But in June of this year, the Acting Assistant Attorney General, Richard Powell, stated that the Antitrust Division is thinking—rethinking its approach to the intersection of antitrust and intellectual property.

Do you agree that a reliable, predictable, quality patent rights promote vigorous, dynamic competition for the benefit of consumers? And that the Antitrust Division should continue to support patent rights as a key driver of innovation in a competitive American economy?

Mr. KANTER. I was not at the Antitrust Division, still not. And so, I can't weigh in on what decision was made and why. It's something that I look forward to examining, if I have the opportunity to work at the Antitrust Division in the Department of Justice. I have tremendous respect for intellectual property rights and the important role it plays. And my view as antitrust enforcement authorities should enforce the law and address conduct that has an anticompetitive effect.

Senator TILLIS. Actually, maybe drill down a little bit on a couple of questions for the record, but not too many. I intend to support your nomination. I should say that up front. I don't know if my staff know that, but you do.

I do have a question about 2019 Joint U.S. PTO/NIST/DOJ policy statement on remedies for standards of central patents, subject to voluntary FRAND commitments. In particular, do you intend—do you intend to withdraw or revise that 2019 joint policy statement? And do you intend to change the Antitrust Division's policy as reflected in that policy statement that antitrust laws should not normally play a role in FRAND licensing disputes between subholders and potential licensees?

Mr. KANTER. Senator, this is something I look forward to examining, if I'm confirmed, and I wouldn't want to prejudge any outcome.

Senator TILLIS. Last year, the Justice Department determined, after its review, that it would maintain consent decrees with ASCAP and BMI to remedy the competitive concerns that arise from the exclusive collective and blanket licensing of copyrights. What are your thoughts on whether and when it should be appropriate to lift the consent decrees?

Mr. KANTER. I have had the opportunity to work on behalf of some companies who are involved in that matter, and so I'll refrain on weighing in, given that I'm a pending nominee.

Senator TILLIS. Well, we'll do some follow-ups. I think finally, what's your opinion about whether certainly large market players like Google and YouTube have an obligation under antitrust law to make tools like content ID available on equal terms for all creators?

Mr. KANTER. Without commenting on specific companies or issues that might be pending before the Agencies or the court, I've been a strong proponent of vigorous antitrust enforcement in the technology area, among others.

Senator TILLIS. Thank you. Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much, Senator Tillis. Next up, Senator Padilla.

Senator PADILLA. Thank you, Madam Chair. I have a question for Mr. Kanter. Thank you. I have a few questions for Mr. Kanter specifically. I appreciate the opportunity to have had a conversation yesterday, so I'm going to follow-up on some of the items that we discussed then, particularly in regards to competition in our labor markets.

Mr. Kanter, as a nominee to be the Assistant Attorney General of the Antitrust Division, you'll play a key role in enforcing antitrust laws and ensuring that the American people benefit from open and competitive marketplaces, not just as consumers, but also, critically, in the labor market. We need an economy that works for workers, full stop. And I hope that you will approach—you will approach the antitrust responsibilities with a keen eye toward ensuring there is sufficient competition to prevent worker exploitation.

For example, tens of millions of workers in America are required to sign overly broad non-compete agreements as a condition of getting a job, which by extension, limits their ability to switch to better paying jobs if they come across that option or opportunity. These restrictions are found throughout our economy, ranging from the tech sector, to quick-serve restaurants, and a whole lot of industries in between. Even in California, where the State has banned the use of non-compete agreements, employers continue to try to use these restrictions to scare employees away from leaving for a better opportunity.

Thankfully, labor exploitation has not escaped President Biden's attention, and I applaud him for his attention to this issue. He's encouraged the FTC and the Department of Justice to use their antitrust authorities to ensure workers have access to high-quality jobs with good pay, benefits, and terms of employment.

So, Mr. Kanter, how will you address concerns about labor exploitation in your role as head of the Antitrust Division.

Mr. KANTER. I whole-heartedly agree with the sentiments that you just expressed, Senator. If the antitrust laws are not working to protect competition to the benefit of workers, then the antitrust laws are not working. And without a doubt, the antitrust laws apply to protecting competition to benefit workers. This is something the Supreme Court has recently reaffirmed in a decision involving the NCAA.

So if confirmed, I am eager to work with hopefully future collages at the Department of Justice to ensure we are having a vigorous and comprehensive antitrust program that protects workers from anticompetitive abuses.

Senator PADILLA. Thank you. And not just working with your future colleagues, if confirmed, but this very Congress, this very Senate, this very Committee.

And on that note, I want to raise a related, but additional issue. Congress has exempted labor organizations from Federal antitrust laws in order to ensure that workers could not be easily exploited by powerful employers. However, this protection does not explicitly extend to a major new sector of our labor force, gig economy workers, who are currently classified as independent contractors. More than 10 percent of workers rely on independent work for their primary source of income. And more than 25 percent of workers par-

ticipate in the gig economy in some capacity. These gig economy workers who perform oftentimes critical services throughout the pandemic—food delivery for example—are precluded from benefiting from the wide range of social benefits and legal protections afforded to employees, including their ability to collectively organize and bargain for better terms of employment without fear of persecution. This is an affront to fair employment, and it's also an issue of equity. Gig workers are more likely to be Black or Latino workers, more likely to be low income, certainly more low income than wage and salary workers. I'm currently exploring opportunities to ensure antitrust laws aren't a roadblock to gig workers who deserve to be able to advocate for their rights.

You know, last week, the Federal Trade Commission Chair, Lina Khan, highlighted this very problem as one demanding the FTC's attention and action, the Department of Justice's attention and action, and she also highlighted it as a place where Congress could step into provide workers with more protections under our antitrust laws.

So, Mr. Kanter, do you commit to working with me to better protect our gig economy workers from labor exploitation? And if there's some thoughts in that regard you'd like to offer, I'd welcome them.

Mr. KANTER. I look forward to working with all actors, including Congress, as appropriate, to make sure that the competitive process is working for everybody, including workers and workers of all characterizations. And so, I also look forward to examining the issue that you mentioned regarding the FTC and speaking with the Federal Trade Commission, if I'm fortunate to be confirmed.

Senator PADILLA. Thank you. Thank you, Madam Chair.

Senator KLOBUCHAR. Okay. Very good. Senator Blackburn.

Senator BLACKBURN. Thank you, Madam Chair. Ms. Beckering, I'd like to come to you. 2006, there's an article where you were quoted as saying that the role of the courts is to remain nonpartisan, your term. However, you also went to say that the courts also have a role in protecting the minority against the majority when they have overstepped their bounds on civil rights and on constitutional rights. So, what did you mean by that? And how do you decide who the minority is in a situation? Isn't that really a stone's throw away from politicizing and putting partisanship on the bench?

Judge BECKERING. Senator, the comments that I was directing at the time that I ran for the Michigan Supreme Court was a campaign of the requirement that the judiciary always remain fair and impartial. The comment that I made about the protecting the minority from the majority was an effort to talk about the Constitution, and that is the job of judges to uphold the law, and the only time they overturn the law is when it conflicts, for example, with other precedent that his higher, and that includes the Constitution. That is the design of our Constitution in America.

Senator BLACKBURN. Okay. The same article, you said you wanted to apply commonsense interpretation of the language of the statute or law if you were elected to the Supreme Court. However, you criticized that then sitting Supreme Court in Michigan for taking

a very liberal interpretation of the language. So how would you describe your judicial philosophy now? How has that evolved for you?

Judge BECKERING. At the time I made those comments, I was speaking from my view as an advocate, and I was analyzing it from that perspective. The goal that I wanted is that this——

Senator BLACKBURN. Did you intend to take that advocacy to the bench?

Judge BECKERING. No. I've been a sitting judge for the past 14 years, so I would apply the law and the——

Senator BLACKBURN. Okay. Would you describe yourself as an originalist or a textualist? What is your philosophy?

Judge BECKERING. I would describe myself as someone who very seriously takes my oath to fairly and impartially apply the law. And as Chief Justice John Roberts has said to have the same strike zone for every party that comes before me to make the court a level playing field.

Senator BLACKBURN. Now you have a history of donating to Democratic candidates exclusively. You were a max-out doner to President Biden's Presidential campaign. You were also the Michigan Democratic Party's nominee for the Michigan Supreme Court. So as a judge, it is your responsibility to fairly administer the law, regardless of your own political or social views.

So how are the American people to be assured that you are going to separate your political and your judicial views?

Judge BECKERING. Senator, I am bound by the Michigan Code of Judicial Conduct. And Canon VII explicitly provides the ability for judges to make contributions to political campaigns, admit advisory opinions——

Senator BLACKBURN. So you see no conflict.

Judge BECKERING. Advisory Opinion 60 from the Judicial Tenure Commission has expressly stated that it is not an appearance of impropriety.

Senator BLACKBURN. Okay. Let me——

Judge BECKERING. And if I were nominated, I would follow the law.

Senator BLACKBURN [continuing]. Move on to Mr. Kanter. First of all, thank you for your time. I appreciate that, and we talked about where the DOJ starts, the FTC starts, the separation, the responsibilities that are there when it comes to the antitrust space. But I've got a couple of questions for you on that. My time's going to run out.

Talk to me. You have criticized the Consumer Welfare Standard. And I want you to briefly walk through that. Describe your thoughts on that standard and how it is applied to technology platforms. And as you know, the Chairman and I each are working on issues of accountability in the tech space.

Mr. KANTER. Thank you, Senator. So, the antitrust laws have to address market realities, and market realities have shifted in dramatic ways just over the last 20 or 30 years. And the kinds of harm that can be inflicted on society as a result of concentrations of power has also changed, and those harms can embody privacy, can involve the marketplace of ideas, and the distribution of information, political discourse. And so, to be effective, the antitrust laws,

in my view, should be enforced a manner that adapts to those market realities.

Senator BLACKBURN. Okay. I've got a couple of more questions. I will submit those to you for a written response. And thank you, all, for being here today. Thanks, Madam Chairman.

Senator KLOBUCHAR. Thank you very much, Senator Blackburn. And when you were gone, I mentioned your leadership with the hearing yesterday in Commerce, which we really appreciated your work on the Op Star Bill and other things. So thank you very much.

I thought I would just ask a few of you who haven't been able to talk one question each, or talked very briefly.

Judge Kumar, since 2015, you've served as the presiding judge—mostly for your family. Right? We must ask one question. You served as the presiding judge of the Oakland County Circuit Court's Adult Treatment Center. Is that right?

Judge KUMAR. Adult Treatment Court. Yes.

Senator KLOBUCHAR. Adult Treatment Court. And I've long been an advocate of alternatives to incarceration and I've been—when I was a prosecutor, and then also here in this place, I've pushed to increase funding for drug treatment courts, and in Hennepin County, we actually had one of the first major drug treatment courts even before I got there. And can you talk a bit about the Adult Treatment Court, why these kinds of programs are so important, and why these alternative—we now have some Federal drug courts, as you know. But why don't you talk a little bit about this?

Judge KUMAR. Thank you, Senator, for that question. That is a program that I am immensely proud of. I did serve as the presiding judge of our treatment court for over 5 years. It's amazing to see the transformation of these people who might have mental health issues. I actually handled both a mental health docket and a substance abuse docket.

Providing them treatment, helping them get employment, helping them get education. We actually had a graduation yesterday. I was unable to attend because I was here. I did send them a video, though, so I'm thinking of my participants today. The most amazing part is at graduation, the participants come up and their booking shots are shown, and then we see them stand before us. And that is amazing. It's amazing to see the transformation. And I know that they derive so much benefit from that program. It is so much more important that incarceration, particularly the treatment. And I know they are always grateful. And it's wonderful to watch their transformation and see them grow and be productive citizens.

Senator KLOBUCHAR. Thank you. I, too, have gone to these graduations. And one of the most incredible things that I've seen in some of our more mid-sized communities—yours is a little bigger—but the people that graduate get to be friends through the program, and they stay friends in even some larger towns they do this, and it really helps give them support when they get out.

Judge KUMAR. Yes.

Senator KLOBUCHAR. Thank you for your work in that area.

Judge KUMAR. Thank you, Senator.

Senator KLOBUCHAR. Ms. Lerner, during your time heading the office of Special Counsel, you received support from both Democrats and Republicans. As was noted, my colleague, Senator Grassley, sent a letter to the White House Counsel in 2017 in support of your nomination to serve a second term, writing that you had built trust and confidence on both sides of the aisle in your ability to objectively and diligently pursue the office's mission.

In your view, how has your approach to the law lead you to have broad support from people across the political spectrum? And how will that experience leading the Special Counsel impact your approach to serving on the Court of Federal Claims?

Ms. LERNER. Thank you for that question, Senator. I am really proud of my service at the Office of Special Counsel and of the nonpartisan approach that I took to enforcing the law, and making sure the Government operated fairly, and efficiently, and effectively. And I had an even handed, fair approach, I believe, that resulted in bipartisan support for my renomination.

And as a mediator now, with the court, I have taken some of those same skills, and I think it's really important to be neutral and give everyone who appears before you the feeling that they are going to be heard and that you don't have an agenda. And so, that same approach that I took when I was Special Counsel, that I take now as a mediator, I would bring with me if I am confirmed to a seat on the Court of Federal Claims.

Senator KLOBUCHAR. Excellent. Thank you. Ms. Beckering, I want to talk briefly about the importance of precedent, and U.S. district judges are bound to follow the precedent of their corresponding circuit courts, the Supreme Court. In your role as appellate judge on the Michigan Court of Appeals, your case records indicate you strongly adhere to relevant precedent when presiding over both civil and criminal cases. How do you view the role of precedent in our legal system, even binding precedent that you may think is wrongly decided?

Judge BECKERING. I believe that precedent is very important because it contributes to the even-handed, predictable stability of the law, and the consistent development of legal principles. And therefore, I think that it contributes to the actual and appearance of the integrity of the court. It is not an unactionable command, but in my role, sitting as a court of appeals judge, it is what I do. I follow precedent. And if I were to become a Federal district judge, I would follow precedent.

Senator KLOBUCHAR. Very good. And I noted one of your quotes where you said, "My judicial philosophy is that judges should take off their partisan hats when they sit on the bench and treat all comers fairly and impartially. They should treat individuals and corporations alike, and they should make their rulings based on the rule of law, not on a political agenda." I assume you still hold that view. Do you want to add anything to that?

Judge BECKERING. Thank you for that question. I ran for the Supreme Court because I felt very strongly that while I enjoyed being an advocate and representing my clients, and I felt the advocacy process is so valuable, I wanted to serve the State at a greater level. And so, I took my philosophy with me to the bench, which

is to be fair and impartial always, and I take that into account in every single case.

Senator KLOBUCHAR. Okay. Very good. Last but not least, Mr. Bonilla. On the side of the Court of Federal Courts claim house is a quote from Lincoln that says, "It is much the duty of Government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals." Can you discuss the importance of the role of Court of Federal Claims? And if confirmed, how you intend to apply the sentiment expressed by Lincoln?

Mr. BONILLA. Thank you for that question, Senator. Having spent the better part of decade practicing before that court, I understand the importance to the American citizens that the Government hold itself accountable for its actions. And as far as my handling of my docket, I will follow the guidance and example of the judge I had the privilege of clerking for, Judge Garrett Brown on the District of New Jersey, who was the most prepared in the courtroom of all the parties, knew the record better than any party, knew the law better than anyone else, and decided all cases promptly, and made sure that everyone who walked out of his courtroom understood that the judge was well prepared and would rule based upon the facts and the law, and nothing else.

Senator KLOBUCHAR. Very, very good. And I do want the record to note here that, if confirmed, you will be the first Latino to serve as a judge on the Court of Federal Claims, which is a pretty cool thing.

Mr. BONILLA. Thank you, Senator.

Senator KLOBUCHAR. Okay. Very good. Well, this has been a really good hearing. We had good attendance, despite the strange hour. I have a feeling all of your families are really hungry and want to have lunch. Is that true of you, Kanter children? Well good. I'm glad. Maybe you want more questions on antitrust we could ask you. That's all right.

Okay. Good. We're okay. You're good. All right. Very good.

Well, thank you. And are we leaving the record open here, guys. Let's see. Questions for the record will be due by the nominees by 5 p.m. on Wednesday, October 13th. And the record will likewise remain open until that time to submit letters and similar materials.

Have these letters also been included yet? They have. Because I want to talk about Arnold Schwarzenegger's letter, but I guess that's already gotten done. Okay. It wasn't for you, Mr. Kanter. I'm sorry. It was for the previous nominee, Judge Koh.

But in any case, I wish you good luck. I think you all did really well in the hearing, and the hearing is adjourned. Thank you.

[Whereupon, at 1:08 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Lucy Haeran Koh
   (middle name also has been spelled as Haerun)

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

   United States Circuit Judge for the Ninth 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: United States District Court for the Northern District of California
   280 South First Street
   San Jose, California 95113

   Residence: Menlo Park, California

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

   1968; Washington, District of Columbia

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1990 – 1993, Harvard Law School; J.D., 1993

   1986 – 1990, Harvard University; B.A. (*magna cum laude*), 1990

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2010 – present
   United States District Court for the Northern District of California

280 South First Street
San Jose, California 95113
United States District Judge

2008 – 2010
Superior Court of California, County of Santa Clara
191 North First Street
San Jose, California 95113
Judge

2002 – 2008
McDermott Will & Emery LLP
275 Middlefield Road, Suite 100
Menlo Park, California 94025
Partner

2000 – 2002
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304
Senior Associate

1997 – 2000
Office of the United States Attorney, Central District of California
312 North Spring Street, Suite 1200
Los Angeles, California 90012
Assistant United States Attorney

1994 – 1997
United States Department of Justice
950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530
Special Assistant to the Deputy Attorney General (1996 – 1997)
Special Counsel, Office of Legislative Affairs (1994 – 1996)

1993 – 1994
United States Senate, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, District of Columbia 20510
Women's Law and Public Policy Fellow

1991 – 1993
Harvard Law School
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant to Professor Charles Haar (Summer 1993)

Research Assistant to Professor Christopher Edley, Jr. (1991 – 1993)

1992
NAACP Legal Defense & Educational Fund, Inc.
99 Judson Street, Suite 1600
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Summer Intern

1992
Dewey Ballantine LLP
1301 Avenue of the Americas
New York, New York 10019
Summer Associate

1991
American Civil Liberties Union, Immigrants' Rights Project
125 Broad Street
New York, New York 10004
Summer Intern

1991
Natural Resources Defense Council
40 West 20th Street
New York, New York 10011
Summer Intern

1990
Prabhassorn Viddhaya School
80/90 Sukhumvit Road
Chonburi, Thailand 20000
English Teacher

Other affiliations (uncompensated):

2016 – present
American Bar Association
Business Law Section
321 North Clark Street
Chicago, Illinois 60654
Advisors Committee Vice Chair (2019 – present)
Cyberspace Law Committee Co-Director of Programs (2018 – present)
Advisor (2016 – 2018)

2014 – present
American Law Institute
4025 Chestnut Street

Philadelphia, Pennsylvania 19104
Data Economy Project Adviser (2018 – present)
Data Privacy Project Adviser (2014 – 2019)

2014 – present
Association of Business Trial Lawyers
115 Northwood Commons
Livermore, California 94551
Board of Governors

2011 – 2018
Harvard University
Board of Overseers
17 Quincy Street
Cambridge, Massachusetts 02138
Law School Visiting Committee

2011 – 2013
St. Thomas More Society of Santa Clara County
830 The Alameda
San Jose, California 95126
Board of Directors

2011 – 2012
Santa Clara University School of Law
High Tech Law Institute
Bannan Hall, Room 301H
500 El Camino Real
Santa Clara, California 95053
Advisory Board

2012
Santa Clara County Bar Association
31 North Second Street, Suite 400
San Jose, California 95113
Fair Judicial Election Practices Commission

2006 – 2008
Asian Pacific American Bar Association of Silicon Valley
3000 El Camino Real
Five Palo Alto Square, Ninth Floor
Palo Alto, California 94306
Board of Directors

2003 – 2004
Korean American Coalition, San Francisco Chapter

3695 Stevenson Boulevard, Unit 225
Fremont, California 94538
Board of Directors

2001 – 2003
Korean American Bar Association of Northern California
575 Market Street, Suite 3700
San Francisco, California 94105
Board of Directors

2000
Harvard-Radcliffe Club of Southern California
627 Aviation Way
Manhattan Beach, California 90266
Board of Directors

2000
Korean American Bar Association of Southern California
9107 Wilshire Boulevard, Suite 450
Beverly Hills, California 90210
Board of Directors

1999 – 2000
Asian Pacific American Bar Association of Los Angeles
1145 Wilshire Boulevard, Second Floor
Los Angeles, California 90017
Board of Governors

1999 – 2000
Korean American Coalition, Los Angeles Chapter
3540 Wilshire Boulevard, Suite 911
Los Angeles, California 90010
Board of Directors

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I 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.

   Orange County Korean American Bar Association, Trailblazer Award (2020)

Korean American Bar Association of Southern California, Trailblazer Award (2019)

Asian Law Alliance, Legal Impact Honoree (2018)

Santa Clara County Trial Lawyers Association, Federal Judge of the Year (2017)

American Bar Association, IP Law Section, Mark T. Banner Award (2017)

Asian American Bar Association of the Greater Bay Area, President's Award (2017)

American Academy in Berlin, John Kluge Distinguished Visitor (2017)

Honorary Degree of Doctor of Laws, Santa Clara University School of Law (2016)

Council of Korean Americans, Public Service Award (2016)

WIRED Magazine, *20 Unsung Geniuses Revolutionizing the Business World* (2015)

Above the Law, *Judging The Judges: Who Are the Most-Cited New Jurists On The Federal Bench?* (2015)

Above the Law, *Seven Rising Star Judges You Want to Clerk For* (2015)

Popular Mechanics, *The 12 Most Influential People in Tech You've Never Heard Of* (2014)

California State Bar Intellectual Property Law Section, IP Vanguard Award—Judiciary Award (2013)

The American Lawyer Litigation Daily, *Four Judges Who Made a Mark* (2012)

The American Lawyer & Corporate Counsel, *Judges to Watch: Ready to Step Up – Ten Recent Appointees to the Federal Bench Who Are Making Their Mark* (2012)

RCR Wireless News, *Top Ten Women in Wireless* (2012)

California Asian Pacific Islander Legislative Caucus, Asian Pacific Islander Heritage Award for Excellence in Law (2011)

Bay Area Asian Pacific American Law Students Association, Outstanding Leadership Award (2011)

Institute for Corean-American Studies Liberty Foundation, Institute for Corean-American Studies Liberty Award (2011)

National Asian Pacific American Bar Association, Women's Leadership Award (2010)

Asian Pacific American Bar Association of Silicon Valley, Trailblazer Award (2010)

National Asian Pacific American Bar Association, Trailblazer Award (2009)

National Association of Professional Asian American Women, Asian American Woman of Achievement Award (2009)

Silicon Valley/San Jose Business Journal, Women of Influence in Silicon Valley (2008)

Korean American Bar Association of San Diego and Korean American Coalition of San Diego, Mugunghwa Award for achievements in law and community service (2008)

McDermott Will & Emery LLP, Client Service Award for *Seagate Tech.* case (2007)

Silicon Valley/San Jose Business Journal, *40 Under 40* (2007)

Federal Bureau of Investigation, Director Louis J. Freeh Award for demonstrated excellence in prosecuting a major criminal case (2000)

Federal Bureau of Investigation, Award in appreciation of outstanding accomplishments in the prosecution of a multi-defendant telemarketing fraud case (2000)

United States Postal Inspection Service, Certificate of Appreciation (2000)

United States Secret Service, Letter of Recognition (1999)

United States Attorney's Office, Sustained Superior Performance Award (1998)

Georgetown University Law Center Women's Law and Public Policy Fellowship (1993)

Harvard Law School Irving R. Kaufman Public Service Fellowship (1993)

Harvard Law School Ames Moot Court, Semifinal Round, Best Brief Award (1992)

Harry S. Truman Scholarship (1988)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association, Business Law Section
Advisor (2016 – 2018)

Cyberspace Law Committee Co-Director of Programs (2018 – present)

American Law Institute
Data Economy Project Adviser (2018 – present)
Data Privacy Project Adviser (2014 – 2019)

Asian American Bar Association of the Greater Bay Area
Mentor Judge (2009 – 2011)

Asian Pacific American Bar Association of the Greater Washington, D.C. Area

Asian Pacific American Bar Association of Los Angeles
Board of Governors (1999 – 2000)

Asian Pacific American Bar Association of Silicon Valley
Board of Directors (2006 – 2008)
Civil Rights Committee Co-Chair (2005 – 2008)

Association of Business Trial Lawyers
Board of Governors (2014 – present)

Bench Bar Coalition

Bench Bar Media Police Committee

California Asian American Judges Association (now known as California Asian Pacific American Judges Association)

California Judges Association

Edward J. Devitt Distinguished Service to Justice Award
Selection Panel Member (2018 – 2019)

Federal Circuit Advisory Council, Model Order Committee

Harvard Law School Association of Southern California

Harvard University Board of Overseers Law School Visiting Committee

Hispanic National Bar Association

Korean American Bar Association of Northern California
Board of Directors (2001 – 2003)
Mentorship Program Group Leader (2008 – 2010)

Korean American Bar Association of Southern California
Board of Directors (2000)

La Raza Lawyers Association of Santa Clara County

Los Angeles County Bar Association

National Association of Women Judges, Annual Convention Education Committee

National Association of Women Lawyers, Amicus Committee

Ninth Circuit District Judges Association

Ninth Circuit Education Committee
Chair (2020 – present)
Chair Elect (2019 – 2020)

San Francisco Bay Area Intellectual Property American Inn of Court

Santa Clara County Bar Association
Fair Judicial Election Practices Commission (2012)
Federal Courts Committee Co-Chair (2011)
Judiciary Committee

Santa Clara County Superior Court
Amicus (Social) Committee Chair (2010)
Civil Courts Committee
Criminal Courts Committee
Domestic Violence Coordinating Committee
Education Committee
Law Books Committee
Legislative and Executive Branch Outreach Committee
Self-Represented Litigants Committee

South Asian Bar Association of Northern California

United States-China First Judicial Exchange
United States Judicial Representative (2016)

United States District Court for the Northern District of California
Beyond May 1st Task Force
Education Committee Chair (2018 – present)
Executive Committee (2012 – 2013, 2020 – present)
Patent Pilot Program Committee Chair (2011 – 2021)
Practice Program

William A. Ingram Inn of Court
Executive Committee (2009 – 2011)
Outreach Committee Chairperson (2009 – 2010)
Team Leader/Mentor Judge (2008 – 2010)

Women Lawyers Association of Los Angeles

10. **Bar and Court Admission**:

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

California, 1997
Massachusetts, 1994

There have been no lapses in membership. In California, a person serving as a judge is not considered a member of the State Bar. Similarly, my Massachusetts bar membership became inactive when I began service as a judge.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Ninth Circuit, 1997
United States Court of Appeals for the Federal Circuit, 2006
United States District Court for the Central District of California, 1997
United States District Court for the Eastern District of California, 2000
United States District Court for the Northern District of California, 2000
United States District Court for the Southern District of California, 2000
United States District Court for the Northern District of Illinois, 2002

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Asian Pacific American Leadership Institute, Senior Fellow (2008 – 2011)

Center for Asian American Media (2004 – 2008)

Conference on Asian Pacific American Leadership (1993 – 1997)
Dinner Committee (1993 – 1995)

Harvard-Radcliffe Club of Southern California (1997 – 2000)
Board of Directors (2000)

Korean American Alliance, District of Columbia Area (1995 – 1997)
Task Force for the Preservation of Immigrant Rights (1995 – 1996)

Korean American Coalition (approximately 1997 – 2000, 2003 – 2004)
Los Angeles Chapter Board of Directors (1999 – 2000)
San Francisco Chapter Board of Directors (2003 – 2004)

Korean American Professional Society (2000 – 2002)

Korean Americans for Political Empowerment (2000 – 2001)

Santa Clara University School of Law, High Tech Law Institute
Advisory Board (2011 – 2012)

Silicon Valley Asian Pacific American Democratic Club (2002 – 2007)

St. Denis Parish Outreach Committee (2017 – present)

St. Thomas More Society of Santa Clara County (2008 – present)
Board of Directors (2011 – 2013)

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 in response to Question 11a 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.

Why Would Someone Volunteer to Serve Meals at Loaves & Fishes?, LOAVES & FISHES FAMILY KITCHEN (Summer 2010). Copy supplied.

With Brian E. Ferguson, *Litigating Doctrine of Equivalents Cases in the Age of Festo*, IP REV. (Spring 2004). Copy supplied.

Combatting Inequality, in PUBLIC INTEREST JOB SEARCH GUIDE (Harv. L. Sch. 6th ed. 1995). Copy supplied.

With Julie Su, *CCR Debunks Wareings's Myths*, HARV. L. REC. (Mar. 12, 1993). Copy supplied.

With multiple co-authors, *Yearning: Race, Gender, and Cultural Politics*, 14 HARV. WOMEN'S L.J. 255 (1991) (book review). Copy supplied.

Letter to the Editors, HARV. CRIMSON (Mar. 1, 1990). Copy supplied.

Letter to the Editors, HARV. CRIMSON (Nov. 18, 1989). Copy supplied.

Mexico Memoir, IV HARV. DEV. F. 11 (1989). 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.

A Model Order Limiting Excess Patent Claims and Prior Art, Federal Circuit Advisory Council (2013). 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 my confirmation hearing before the Judiciary Committee of the United States Senate to be a United States Circuit Judge for the Ninth Circuit Court of Appeals. I also answered written Questions for the Record. Video of the hearing is available at www.judiciary.senate.gov/meetings/07/13/2016/nominations and a copy of my responses to the written questions is supplied.

On February 11, 2010, I testified at my confirmation hearing before the Judiciary Committee of the United States Senate to be a United States District Judge for the Northern District of California. I also answered written Questions for the Record. Video of the hearing is available at www.judiciary.senate.gov/meetings/date-and-time-change_nominations and a copy of my responses to the written questions is 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 notes, furnish a copy of any outline or notes from which you spoke.

The following list of speeches includes those I was able to locate after a diligent review of my records. It is possible that there are additional speeches to which I no longer have access or for which I did not prepare formal remarks or notes.

July 12, 2021: Speaker, Brown Bag Lunch with Summer Interns from the United States Attorney's Office and the Federal Public Defender's Office, San Jose, California. We had a conversation about where the interns grew up and their childhoods and what they hoped to do with their law degrees. I have no notes, transcript, or recording. The address of the United States Attorney's Office is 150 Almaden Boulevard, Suite 900, San Jose, California 95113. The address of the Federal Public Defender's Office is 55 South Market Street, Suite 820, San Jose, California 95113.

June 23, 2021: Panelist, "Women in IP: Beyond the Robe Fireside Chat," San Francisco Intellectual Property Law Association and Los Angeles Intellectual Property Law Association, Joint Program and 2021 Annual Seminar (virtual). Notes supplied.

May 20, 2021: Panelist, "Reflections from the Bench," Harvard Law School Asian American Law Students Association (virtual). Notes supplied.

May 7, 2021: Panelist, "Trailblazers! APA Judges on the Federal Bench," Georgia Asian Pacific American Bar Association and National Asian Pacific American Bar Association (virtual). Notes supplied.

May 6, 2021: Speaker, Congratulatory Video Recording, Virtual Installation of 2021 Board of Governors and Officers, Korean American Bar Association of Southern California, Asian Pacific American Bar Unity Night (virtual). Notes supplied.

April 30, 2021: Speaker, California Community Colleges, Law Day with California LAW Pathways (virtual). Notes supplied.

March 23, 2021: Panelist, Clerkship Panel, University of Pennsylvania Carey Law School (virtual). Notes supplied.

February 24, 2021: Speaker, Welcoming Remarks, Annual Meeting of Members and Mentorship Program Kickoff, Korean American Bar Association of Southern California (virtual). Notes supplied.

February 22, 2021: Panelist, "Navigating the Clerkship Process: A Talk with Justice Goodwin Liu (CA Supreme Court) & Judge Lucy Koh (N.D. Cal.)," Harvard Law School Asian Pacific American Law Students Association (virtual). Notes supplied.

February 11, 2021: Administrator of Oath and Speaker, Swearing-In Ceremony, Harvard Law School Association of Northern California (virtual). Notes supplied.

January 29, 2021: Administrator of Oath, 117th Congressional Swearing-in Ceremony for AAPI Members of Congress, Asian Pacific American Institute for Congressional Studies (virtual). I administered the oath and congratulated the Members. I have no notes, transcript, or recording. The address of the Asian Pacific American Institute for Congressional Studies is 1001 Connecticut Avenue, Northwest, Suite 320, Washington, District of Columbia 20036.

November 12, 2020: Speaker, Video Tribute to Justice Ruth Bader Ginsburg, Asian American Bar Association of the Greater Bay Area Annual Gala (virtual). Notes supplied.

November 5, 2020: Panelist, "Incorporating Science, As Scientists Practice It, Into Patent Law: A Conversation with Judges," NAPABA National Convention 2020 (virtual). Notes supplied.

October 15, 2020: Keynote Speaker, Orange County Korean American Bar Association 15th Annual Installation (virtual). Notes supplied.

August 27, 2020: Panelist, "Judges Provide Tips on Effective Virtual Advocacy in the Age of COVID-19," San Francisco Bay Area Chapter of the Association of Corporate Counsel (virtual). Notes supplied.

August 18, 2020: Speaker, United States Attorney's Office Conversation (virtual). Notes supplied.

July 30, 2020: Speaker, Asian Pacific American Institute for Congressional

Studies (APAICS) in Conversation with the Honorable Lucy H. Koh, APAICS and APAICS Women's Collective Summit (virtual). Video available at https://www.youtube.com/watch?v=uegVkt0M0HM.

July 16, 2020: Speaker, Question and Answer Session with Summer Interns, Law in Technology Diversity Collaborative (virtual). Notes supplied.

July 14, 2020: Speaker, "Discussion with Judge Lucy H. Koh," New York Intellectual Property Law Association Webinar (virtual). Notes supplied.

March 5, 2020: Panelist, "Consumer Class Actions," Class Action Law Forum 2020, University of San Diego School of Law and Western Alliance Bank, San Diego, California. Notes supplied.

February 15, 2020: Judge, Cornell Moot Court, Ithaca, New York. I was a volunteer judge at the competition. I have no notes, transcript, or recording. The address of Cornell Law School is 260 Myron Taylor Hall, Ithaca, New York 14853.

January 26, 2020: Panel Moderator, "Abacus: Small Enough to Jail," 2020 Mid-Winter Workshop for Judges of the Ninth Circuit, Palm Springs, California. Notes supplied.

January 24, 2020: Judge, Marion Rice Kirkwood Moot Court Competition Semifinal Round, Stanford Law School, Stanford, California. I was a volunteer judge at the competition. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

October 24, 2019: Speaker, Red Mass Dinner, St. Thomas More Society of Santa Clara County, Santa Clara, California. Notes supplied.

August 23, 2019: Panelist, Federal Court Panel, "So, You Want to be a Judge? Pathways to the Bench," California Women Lawyers and the California Lawyers Association Litigation Section, San Francisco, California. Notes supplied.

July 12, 2019: Speaker, Brown Bag Lunch Question and Answer Session with Summer Interns from the United States Attorney's Office and the Federal Public Defender's Office, San Jose, California. I spoke about the differences between the U.S. District Court and the California Superior Court, particularly the differences in the practice of criminal law in federal and state court. I have no notes, transcript, or recording. The address of the United States Attorney's Office is 150 Almaden Boulevard, Suite 900, San Jose, California 95113. The address of the Federal Public Defender's Office is 55 South Market Street, Suite 820, San Jose, California 95113.

June 13, 2019: Keynote Speaker, Seventh Annual Women Lawyer's Symposium: Raising the Bar, Santa Clara County Bar Association, Mountain View, California. Notes supplied.

May 25, 2019: Panel Moderator, "What Should Government and Platforms Do (or Not Do) About Fake News?," Stanford Constitutional Law Center, Free Speech and the Internet Conference, Stanford, California. Notes supplied.

May 15, 2019: Panelist, Fourth Annual Criminal Law Symposium, Northern District of California Practice Program, San Francisco, California. Notes supplied.

May 14, 2019: Speaker, Tribute to United States District Judge Edward Davila, Federal Judge of the Year Award Recipient, Judges Night 2019, Santa Clara County Trial Lawyers Association, San Jose, California. Notes supplied.

May 14, 2019: Speaker, Tribute to California Superior Court Judge Thang Nguyen Barrett, John D. Foley Trial Judge of the Year Award Recipient, Judges Night 2019, Santa Clara County Trial Lawyers Association, San Jose, California. Notes supplied.

May 6, 2019: Speaker, Essentials of U.S. and California Government Class, San Jose State University, San Jose, California. Notes supplied.

April 25, 2019: Speaker, Question and Answer Session with Stanford Law School Advanced Legal Writing Class and Oral Argument Class Following Court Observation, San Jose, California. I discussed what makes an oral argument or a brief effective or ineffective. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

April 13, 2019: Panel Moderator, Resolving Class Actions, Northern District of California 2019 District Conference, Napa, California. Notes supplied.

April 10, 2019: Keynote Speaker, Keynote Address and 2019 Trailblazer Award Acceptance Speech, Korean American Bar Association of Southern California, 39th Annual Board of Governors Installation and Awards Dinner, Los Angeles, California. Notes supplied.

March 21, 2019: Speaker, Question and Answer Session with Santa Clara University Law School Civil Procedure Class Following Court Observation, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of Santa Clara University Law School is 500 El Camino Real, Santa Clara, California 95053.

January 3, 2019: Administrator of Oath to Santa Clara County Sheriff Laurie Smith, San Jose, California. Notes supplied.

November 10, 2018: Judge, Thomas Tang International Moot Court Competition Final Round, National Asian Pacific American Bar Association, Chicago, Illinois. I was a volunteer judge at the 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.

October 28, 2018: Speaker, "Lightning Talks—Lessons from the Edge," Harvard Asian American Alumni Alliance Summit 2018, Cambridge, Massachusetts. Notes supplied.

October 11, 2018: Panelist, "Judicial Independence and the Challenges of Complexity," A Symposium Honoring Judge Jeremy Fogel, Federal Bar Association and Stanford Law School, Stanford, California. Notes supplied.

September 12, 2018: Speaker, Question and Answer Session with University of California, Berkeley, School of Law Visiting Scholars and LL.M. Students from South Korea Following Court Observation, San Jose, California. I spoke about my jobs prior to becoming a federal judge and my role as a judge. I have no notes, transcript, or recording. The address of the University of California, Berkeley, School of Law is Boalt Hall #7200, Berkeley, California 94720.

June 28, 2018: Speaker, Question and Answer Session with Santa Clara University Katharine & George Alexander Community Law Center Students Following Court Observation, San Jose, California. I spoke about how I became a judge, do's and don't's for oral and written advocacy, advice for new lawyers, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the Katharine & George Alexander Community Law Center is 1030 The Alameda, San Jose, California 95126.

June 18, 2018: Speaker, Brown Bag Lunch Question and Answer Session with Summer Interns from the United States Attorney's Office and the Federal Public Defender's Office, San Jose, California. I spoke about the differences between the U.S. District Court and the California Superior Court, the differences in the practice of criminal law in federal and state court, and advice for law students. I have no notes, transcript, or recording. The address of the United States Attorney's Office is 150 Almaden Boulevard, Suite 900, San Jose, California 95113. The address of the Federal Public Defender's Office is 55 South Market Street, Suite 820, San Jose, California 95113.

May 30, 2018: Speaker, Santa Clara County Trial Lawyers Association, Judges' Night 2018, Introduction of Federal Judge of the Year U.S. Magistrate Judge Nathanael Cousins, San Jose, California. Notes supplied.

April 26, 2018: Judge, University of Chicago Edward W. Hinton Moot Court Competition Final Round, Chicago, Illinois. I was a volunteer judge at the competition. I have no notes, transcript, or recording. The address of the University of Chicago Law School is 1111 East 60th Street, Chicago, Illinois 60637

April 26, 2018: Panelist, Lunch Question and Answer Session with American Constitution Society and Federalist Society, University of Chicago, Hyde Park, Illinois. Notes supplied.

March 23, 2018: Speaker, Legal Impact Award Acceptance Speech, Asian Law Alliance, 41st Anniversary Dinner, San Jose, California. Notes supplied.

March 14, 2018: Panelist, "Pretrial Management: Sizing up the Litigation, Creating a Game Plan, and Managing Discovery and Motions Practice," Federal Judicial Center Managing Multi-district and Other Complex Litigation Workshop, Washington, District of Columbia. Notes supplied.

March 1, 2018: Panelist, "The Evolving Challenge of Judging: 2018 Edition," 32nd Annual National Institute on White Collar Crime, American Bar Association, San Diego, California. Notes supplied.

January 26, 2018: Judge, Marion Rice Kirkwood Moot Court Competition Semifinal Round, Stanford Law School, Stanford, California. I was a volunteer judge at the competition. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

November 18, 2017: Interview by Karen Korematsu, U.S. Citizenship and Immigration Services Naturalization Ceremony, National Council for the Social Studies Annual Conference, San Francisco, California. Video available at https://www.youtube.com/watch?v=HUwlcgJWDYA.

November 16, 2017: Panelist, Lunch Question and Answer Session with San Jose Judges, Federal Bar Association, San Jose, California. Notes supplied.

November 4, 2017: Judge, Thomas Tang International Moot Court Competition Final Round, National Asian Pacific American Bar Association, Washington, District of Columbia. I was a volunteer judge at the 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.

October 30, 2017: Speaker, "Issues in Data Breach and Consumer Privacy Cases" Plenary Session, 2017 Multi-District Litigation Transferee Judges' Conference, Palm Beach, Florida. Notes supplied.

October 2, 2017: Keynote Speaker, Asian/Pacific Bar Association of Sacramento 2017 Gala Dinner, Sacramento, California. Notes supplied.

September 27, 2017: Panelist, Female Firsts Panel, Asian American Bar Association of the Greater Bay Area Women's Committee, San Francisco, California. Notes supplied.

September 27, 2017: Speaker, American Bar Association Intellectual Property Law Section, Women in IP Task Force Monthly Call, San Jose, California. Notes supplied.

September 14, 2017: Speaker, "View from the Bench on Data Breach and Privacy Litigation," American Bar Association Business Law Section Annual Meeting, Cyberspace Law Committee Meeting, Chicago, Illinois. Notes supplied.

September 7, 2017: Panelist, District Judges Panel, "General Counsel & The Courts: A Dialogue," Federal Bar Association Northern District of California Chapter and Stanford Law School, Stanford, California. Notes supplied.

August 1, 2017: Speaker, Question and Answer Session with High School Government and History Teachers, Gilder Lehrman Institute of American History, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the Gilder Lehrman Institute of American History is 49 West 45th Street, Sixth Floor, New York, New York 10036.

July 22, 2017: Panelist, "Pursuing Career Paths in the Judiciary," National Asian Pacific American Bar Association Western Regional Conference, San Jose, California. Notes supplied.

July 22, 2017: Panelist, "IP Career Management for APA Attorneys: Growing with Business & Technology," National Asian Pacific American Bar Association Western Regional Conference, San Jose, California. Notes supplied.

June 23, 2017: Speaker, Brown Bag Lunch Question and Answer Session with Summer Interns from the United States Attorney's Office and the Federal Public Defender's Office, San Jose, California. I spoke about the process for becoming a federal judge, changes in the U.S. District Court, and changes in my caseload over time. I have no notes, transcript, or recording. The address of the United States Attorney's Office is 150 Almaden Boulevard, Suite 900, San Jose, California 95113. The address of the Federal Public Defender's Office is 55 South Market Street, Suite 820, San Jose, California 95113.

June 20, 2017: Speaker, U.S. Courthouse Summer Extern Brown Bag Lunch

Presentation, San Jose, California. Notes supplied.

May 31, 2017: Speaker, Federal Judge of the Year Award Acceptance Speech, Santa Clara County Trial Lawyers Association, Judges' Night 2017, San Jose, California. Notes supplied.

May 24, 2017: Speaker, Question and Answer Session with Graduate Patent Program Students from the Korea Advanced Institute of Science and Technology Following Court Observation, San Jose, California. I spoke about our high tech and intellectual property docket. I have no notes, transcript, or recording. The address of the Korea Advanced Institute of Science and Technology is 291 Daehak-ro, Yuseong-gu, Daejeon 34141, Republic of Korea.

May 14, 2017: Speaker, William & Mary Law School Diploma Ceremony, Williamsburg, Virginia. Video available at https://www.youtube.com/watch?v=U1D3hu7y4Rg.

April 20, 2017: Speaker, Meet and greet with members of Harvard Law School's Asian Pacific American Law Students Association, Cambridge, Massachusetts. I spoke about how to become a state and federal judge, legal careers, and life at Harvard Law School. I have no notes, transcript, or recording. The address of the Harvard Law School Asian Pacific American Law Students Association is 3039 Wasserstein Hall, 1585 Massachusetts Avenue, Cambridge, Massachusetts 02138.

April 20, 2017: Speaker, "Portrait of Silicon Valley Litigation," Harvard Law School Journal on Law and Technology, Asian Pacific American Law Students Association, and American Constitution Society, Cambridge, Massachusetts. Notes supplied.

April 7, 2017: Panelist, "Legal Snarls in the World Wide Web Panel," ABA Business Law Section Spring Meeting, New Orleans, Louisiana. Notes supplied.

April 6, 2017: Speaker, ABA Business Law Section Spring Meeting High School Outreach, Lake Area New Tech Early College High School, New Orleans, Louisiana. Notes supplied.

April 5, 2017: Speaker, Mark T. Banner Award Acceptance Speech, American Bar Association Intellectual Property Law Section, Crystal City, Virginia. Notes supplied.

March 23, 2017: Speaker, AABA President's Award Acceptance Speech, Asian American Bar Association of the Greater Bay Area 41st Annual Dinner, San Francisco, California. Notes supplied.

March 10, 2017: Guest Speaker, Asian Pacific American Bar Association of Los Angeles Installation Dinner, Los Angeles, California. Notes supplied.

March 1, 2017: Speaker, Question and Answer Session with High School Students Following Court Observation, Castilleja School, San Jose, California. I spoke about the setting of trial dates and the role of counsel in criminal cases. I have no notes, transcript, or recording. The address of the Castilleja School is 1310 Bryant Street, Palo Alto, California 94301.

February 24, 2017: Participant, Breakfast Conversation with Justice Cuellar, American Academy in Berlin, Berlin, Germany. I spoke about the process of becoming a federal judge in the United States, the level of experience of federal judges in the United States, working at the United States Department of Justice, patent litigation, and data breach litigation. I have no notes, transcript, or recording. The address of the American Academy in Berlin is Am Sandwerder 17-19, 14109 Berlin, Germany.

February 22, 2017: Speaker, "Portrait of Silicon Valley Litigation," John W. Kluge Distinguished Visitor Lecture, American Academy in Berlin, Berlin, Germany. Notes supplied.

December 7, 2016: Speaker, Swearing-In Ceremony, Class of 2016, Stanford Law School, Stanford, California. Notes supplied.

November 3, 2016: Panelist, "Managing Antitrust and Complex Business Trials: A Discussion with Three Federal District Judges," California State Bar Section on Antitrust, Unfair Competition, and Privacy, 2016 Golden State Antitrust, Unfair Competition, and Privacy Law Institute, San Francisco, California. Transcript supplied.

November 1, 2016: Breakout Presenter, Data Breach Multi-District Litigations Breakout Discussion, 2016 Multi-District Litigation Transferee Judges' Conference, Palm Beach, Florida. Notes supplied.

October 18, 2016: Panelist, Northern District of California District Judges Panel, The Honorable Ronald M. Whyte Symposium, Stanford, California. Video available at https://www.youtube.com/watch?v=0fXqk0eqJUo.

October 14, 2016: Speaker, Public Service Award Acceptance Speech, 2016 Gala and Awards Dinner, Council of Korean Americans, Washington, District of Columbia. Video available at https://www.youtube.com/watch?v=KiVGXIHKQAI.

August 4, 2016: Panelist, "Precedent, Guiding Cases, and Amicus Briefs and Their Use in Judicial Decision Making," United States-China Judicial Dialogue, Beijing, China. Notes supplied.

August 3, 2016: Panelist, "Efficiency and Justice in Commercial Cases," United

States-China Judicial Dialogue, Beijing, China. Notes supplied.

July 26, 2016: Speaker, Question and Answer Session with High School Government and History Teachers, Gilder Lehrman Institute of American History, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the Gilder Lehrman Institute of American History is 49 West 45th Street, Sixth Floor, New York, New York 10036.

May 21, 2016: Speaker, Commencement, Santa Clara University Law School, Santa Clara, California. Notes supplied.

April 30, 2016: Panel Moderator, "Sexual Misconduct: Definitions," Civil Liberties on Campus Conference, Stanford Constitutional Law Center, Stanford Law School, Stanford, California. Notes supplied.

April 12, 2016: Panelist, "Effect of the Recent Civil Rules Amendments on Patent Cases and the Heightened Importance of Active Case Management," Federal Judicial Center-U.S. Patent and Trademark Office Patent Law Seminar for Judges, Alexandria, Virginia. Notes supplied.

April 11, 2016: Panelist, Judges Panel, Patent and Trademark Breakout Session, Federal Circuit Judicial Conference, Washington, District of Columbia. Notes supplied.

March 2, 2016: Speaker, Question and Answer Session with High School Students Following Court Observation, Castilleja School, San Jose, California. I spoke about plea colloquies in criminal cases. I have no notes, transcript, or recording. The address of the Castilleja School is 1310 Bryant Street, Palo Alto, California 94301.

February 23, 2016: Panelist, "Juror Management Challenges and Opportunities: During Service," Juror Management and Utilization Workshop, Federal Judicial Center, Redondo Beach, California. Notes supplied.

February 20, 2016: Keynote Speaker, "Tino and Lucy's 10 Personal and Professional Tips to Make Your Life Less Crazy," 16th Annual Conference, Bay Area Asian Pacific American Law Students Association, Berkeley, California. Notes supplied.

February 11, 2016: Speaker, Question and Answer Session with Law Students Following Court Observation, American Constitution Society of Stanford Law School, San Jose, California. I spoke about the Northern District of California's docket, the patent pilot program, multi-district litigation, and opportunities for new lawyers to argue in court. I have no notes, transcript, or recording. The

address of the American Constitution Society of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

January 14, 2016: Panelist, State of Law and Technology Roundtable, Berkman Center for Internet & Society at Harvard University, Cambridge, Massachusetts. The panel discussed the prevalence of algorithms in decision-making. I have no notes, transcript, or recording. The address of the Berkman Center for Internet & Society at Harvard University is 23 Everett Street, Second Floor, Cambridge, Massachusetts 02138.

November 10, 2015: Speaker, Question and Answer Session with LL.M. International Students, Santa Clara University Law School, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of Santa Clara University Law School is 500 El Camino Real, Santa Clara, California 95053.

November 9, 2015: Speaker, Question and Answer Session with Third Graders, Las Lomitas Elementary School, Menlo Park, California. I spoke about career paths in the law and federal and state courts. I have no notes, transcript, or recording. The address of Las Lomitas Elementary School is 299 Alameda de las Pulgas, Atherton, California 94027.

November 6, 2015: Panelist, "Shattering Double Ceilings: How to Increase APA Women Leaders in Law," National Convention, National Asian Pacific American Bar Association, New Orleans, Louisiana. Notes supplied.

November 6, 2015: Panelist, "Litigating High-Profile Cases," National Convention, National Asian Pacific American Bar Association, New Orleans, Louisiana. Notes supplied.

October 28, 2015: Speaker, Judicial Best Practices Committee Announcement, Women in IP Global Summit 2015, Chiefs of Intellectual Property (ChIPs), Washington, District of Columbia. Notes supplied.

October 28, 2015: Panelist, Trial Judges Panel, Women in IP Global Summit 2015, Chiefs of Intellectual Property (ChIPs), Washington, District of Columbia. Notes supplied.

October 27, 2015: Speaker, Brown Bag Lunch with Office of the Solicitor General, U.S. Department of Justice, Washington, District of Columbia. Notes supplied.

May 30, 2015: Panelist, "Making Technology Work for You," Harvard Class of 1990, 25th Reunion, Cambridge, Massachusetts. Notes supplied.

May 11, 2015: Judge, Fifth Grade Mock Trial, Oak Avenue School, San Jose, California. I was a volunteer judge. I have no notes, transcript, or recording. The address of the Oak Avenue School is 1501 Oak Avenue, Los Altos, California 94024.

May 8, 2015: Speaker, Question and Answer Session, Working Group on Intellectual Property, Innovation, and Prosperity, "From Trolls to Thickets: The Patent System and the US Economy" Conference, Hoover Institution, Stanford University, Stanford, California. Notes supplied.

January 30, 2015: Speaker, Question and Answer Session with Students, Introduction to Environmental Law Class, San Jose State University, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of San Jose State University is One Washington Square, San Jose, California 95192.

January 7, 2015: Panelist, "Challenging Careers and Family Life: Striking the Balance," William A. Ingram Inn of Court, Santa Clara University School of Law, Santa Clara, California. Notes supplied.

September 24, 2014: Speaker, "Empowering and Advancing Female APA Attorneys: The Trailblazer's Perspective," Asian Pacific American Bar Association of Silicon Valley's Women in Law Committee and Stanford Law School Asian and Pacific Islander Law Students Association, Stanford, California. Notes supplied.

September 5, 2014: Speaker, Question and Answer Session with Students, Introduction to Environmental Law Class, San Jose State University, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of San Jose State University is One Washington Square, San Jose, California 95192.

July 28, 2014: Speaker, "Perspectives on the American Judicial System," 2014 Draper Hills Summer Fellows Program on Democracy and Development, Stanford University Center on Democracy, Development, and the Rule of Law, Stanford, California. Notes supplied.

March 6, 2014: Speaker, "A Conversation with Judge Lucy H. Koh," Harvard Law School Journal on Law and Technology, Asian Pacific American Law Students Association, and Asia Law Society, Cambridge, Massachusetts. Notes supplied.

January 27, 2014: Speaker, Brown Bag Lunch with Students, American Constitution Society of Stanford Law School, San Jose, California. I spoke about

my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the American Constitution Society of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

January 26, 2014: Welcome Speech, Annual Retreat, Asian Pacific American Bar Association of Silicon Valley, Palo Alto, California. I spoke about the importance of the board's and committee chairs' work. I have no notes, transcript, or recording. The address of the Asian Pacific American Bar Association of Silicon Valley is P.O. Box 60988, Palo Alto, California 94306.

December 6, 2013: Speaker, Swearing-In Ceremony for New Bar Admits, University of San Francisco School of Law, San Francisco, California. Notes supplied.

November 8, 2013: Speaker, Acceptance Speech for IP Vanguard Award—Judiciary Award, California State Bar, Intellectual Property Law Section, Berkeley, California. Notes supplied.

November 1, 2013: Speaker, Assembly, The Harker School, San Jose, California. Notes supplied.

October 22, 2013: Speaker, "A Discussion with the Honorable Lucy Koh '93," Harvard Law School Association Recent Graduates Council and Stanford Law School, Stanford, California. Notes supplied.

October 12, 2013: Speaker, "San Jose's Federal Judges Address Hot-Button Litigation Topics," Federal Courts Committee, State Bar of California Annual Meeting, San Jose, California. Notes supplied.

September 27, 2013: Panelist, "My Brilliant but Unusual Career," Leaders for Change, Celebration 60, Women Transforming Our Communities & the World, Harvard Law School, Cambridge, Massachusetts. Notes supplied. (My 2016 Questionnaire provided a link to video of the event. That video is no longer available.)

September 20, 2013: Speaker, Question and Answer Brown Bag Lunch with Summer Interns, Asian Law Alliance, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the Asian Law Alliance is 991 West Hedding Street, Suite 202, San Jose, California 95126.

July 30, 2013: Speaker, Question and Answer Session with High School Government and History Teachers, Gilder Lehrman Institute of American History, San Jose, California. I spoke about my professional background, career

paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the Gilder Lehrman Institute of American History is 49 West 45th Street, Sixth Floor, New York, New York 10036.

July 23, 2013: Speaker, "Perspectives on the American Judicial System," 2013 Draper Hills Summer Fellows Program on Democracy and Development, Stanford University Center on Democracy, Development, and the Rule of Law, Stanford, California. Notes supplied.

June 24, 2013: Speaker, Brown Bag Lunch Question and Answer Session with Summer Interns from the United States Attorney's Office and the Federal Public Defender's Office, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the United States Attorney's Office is 150 Almaden Boulevard, Suite 900, San Jose, California 95113. The address of the Federal Public Defender's Office is 55 South Market Street, Suite 820, San Jose, California 95113.

June 21, 2013: Speaker, Question and Answer Brown Bag Lunch with Summer Interns, Asian Law Alliance, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the Asian Law Alliance is 991 West Hedding Street, Suite 202, San Jose, California 95126.

June 18, 2013: Speaker, "Trolls, Traders, and Wizards – Understanding the Market for Innovation," Association of Business Trial Lawyers, East Palo Alto, California. Notes supplied.

June 17, 2013: Speaker, "If a Little Knowledge Can Be Dangerous, How About a Lot of Knowledge?," Federal Courts Committee, Santa Clara County Bar Association, Palo Alto, California. Notes supplied.

June 14, 2013: Speaker, "A View from the Bench," National Convention, American Constitution Society, Washington, District of Columbia. Video available at https://www.youtube.com/watch?v=_hh_vOcRVDo.

May 8, 2013: Speaker, "View from the Bench," The Recorder, San Jose, California. Notes supplied.

May 3, 2013: Panelist, Judicial Panel, 2013 Advanced Complex Litigation Series, Federal Circuit Bar Association, Santa Clara, California. I spoke about district court patent case management and litigation. I have no notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 I Street, Northwest, Suite 801, Washington, District of Columbia 20006.

April 27, 2013: Speaker, "Beyond Your Limits," Korean-American Youth Forum, San Francisco Korean Education Center, San Jose, California. Notes supplied.

April 13, 2013: Panel Moderator, "China's Economic Development: the Impact in Federal Court," 2013 Northern District of California Judicial Conference, Napa, California. Notes supplied.

April 11, 2013: Speaker, Question and Answer Session with Law Students Following Court Observation, Federal Litigation Class, Stanford Law School, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

March 21, 2013: Speaker, Question and Answer Session with Law Students Following Court Observation, Civil Procedure Class, Santa Clara University Law School, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of Santa Clara University Law School is 500 El Camino Real, Santa Clara, California 95053.

March 15, 2013: Speaker, Brown Bag Lunch, Federal Public Defender's Office, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the Federal Public Defender's Office is 55 South Market Street, Suite 820, San Jose, California 95113.

March 9, 2013: Speaker, Keynote Address, Second Annual Banquet, University of California, Davis, School of Law Asian Pacific American Law Student Association, Sacramento, California. Notes supplied.

March 2, 2013: Speaker, A Conversation with Federal Judges, Student Convention 2013, American Constitution Society of Stanford Law School, Stanford, California. Video available at https://www.youtube.com/watch?v=oLmrKXsXg2M.

February 28, 2013: Speaker, Question and Answer Session with Law Students, Civil Procedure Class, Santa Clara University Law School, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of Santa Clara University Law School is 500 El Camino Real, Santa Clara, California 95053.

February 1, 2013: Speaker, Question and Answer Session with College Students, Introduction to Environmental Law Class, San Jose State University, San Jose, California. I spoke about my professional background, career paths in the law,

how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of San Jose State University is One Washington Square, San Jose, California 95192.

January 25, 2013: Speaker, Keynote Speech, Sixth Annual Dale Minami Public Interest Fellowship Dinner, University of California, Berkeley, School of Law Asian Pacific American Law Students Association, San Francisco, California. Notes supplied.

November 28, 2012: Panelist, Judges' Panel, Intellectual Property Inn of Court, San Jose, California. Notes supplied.

November 16, 2012: Panelist, "Judges' Views on Litigating Complex Cases," National Convention, National Asian Pacific American Bar Association, Washington, District of Columbia. Notes supplied.

October 13, 2012: Speaker, "State Court Practitioner's Playbook for Mastering Federal Court," Annual Meeting, California State Bar, Monterey, California. Notes supplied.

October 5, 2012: Speaker, Jay Koh Memorial Service, Sunnyvale, California. Notes supplied.

July 24, 2012: Speaker, Question and Answer Session with High School Government and History Teachers, Gilder Lehrman Institute of American History, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the Gilder Lehrman Institute of American History is 49 West 45th Street, Sixth Floor, New York, New York 10036.

July 10, 2012: Speaker, Question and Answer Brown Bag Lunch with Summer Interns, Asian Law Alliance, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the Asian Law Alliance is 991 West Hedding Street, Suite 202, San Jose, California 95126.

June 25, 2012: Speaker, Question and Answer Brown Bag Lunch with Summer Interns from the United States Attorney's Office and the Federal Public Defender's Office, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of the United States Attorney's Office is 150 Almaden Boulevard, Suite 900, San Jose, California 95113. The address of the Federal Public Defender's Office is 55 South Market Street, Suite 820, San Jose, California 95113.

June 23, 2012: Panelist, Law Panel, "Mentoring the Next Generation: Career Pathways," Council of Korean Americans, Stanford, California. Notes supplied.

June 23, 2012: Keynote Speaker, "Mentoring the Next Generation: Career Pathways," Council of Korean Americans, Stanford, California. Notes supplied.

May 22, 2012: Speaker, "Patent Local Rules, Pre-Trial Orders, and Early Case Management Philosophy, Context, Logic, and Departures," Intellectual Property in the New Technological Age: Conference for Federal Judges, Federal Judicial Center and the Berkeley Center for Law & Technology, Berkeley, California. Notes supplied.

May 21, 2012: Panelist, "The Federal Circuit/District Court Interface," Patent Institutions Summit: Bringing Together the PTO, Federal Circuit, District Courts, and the ITC, Stanford Program in Law, Science & Technology and Berkeley Center for Law & Technology, Stanford, California. Video available at https://www.youtube.com/watch?v=ni9NZo5yWpM.

May 19, 2012: Speaker, Distinguished Speaker Dinner, Network of Korean-American Leaders Fellowship Program, School of Social Work, Center for Asian Pacific Leadership, University of Southern California, Palo Alto, California. Notes supplied.

May 17, 2012: Speaker, "The Judicial Viewpoint: Judicial Panel on Hot Topics in Patent and Trademark Law," Federal Circuit Court of Appeals Judicial Conference, Washington, District of Columbia. Notes supplied.

May 9, 2012: Speaker, "Changing Venue: A Conversation with Judge Lucy H. Koh and Judge Edward J. Davila," William A. Ingram Inn of Court, San Jose, California. Notes supplied.

May 3, 2012: Speaker, Tribute to Magistrate Judge Paul Grewal, Judge of the Year, Judges' Night 2012, Santa Clara County Trial Lawyers Association, San Jose, California. Notes supplied.

April 28, 2012: Speaker, Introduction of Mariano-Florentino Cuellar, Northern District of California Judicial Conference, Monterey, California. Notes supplied.

April 18, 2012: Speaker, "One Judge's Perspective on High Tech Litigation in the Northern District of California," MCLE Brown Bag, High Technology Section, Santa Clara County Bar Association, San Jose, California. Notes supplied.

April 3, 2012: Panelist, Panel on Clerking, University of California, Berkeley, School of Law Women of Color Collective, Coalition for Diversity, and Men of Color Alliance, Berkeley, California. Notes supplied.

March 1, 2012: Panelist, Patent Law Roundtable Discussion, Northern District of California Practice Program, San Francisco, California. Notes supplied.

February 25, 2012: Speaker, 25th Anniversary Video, Pro Bono Project of Silicon Valley, Palo Alto, California. Notes supplied.

February 3, 2012: Speaker, Question and Answer Session with College Students, Introduction to Environmental Law Class, San Jose State University, San Jose, California. I spoke about my professional background, career paths in the law, how to become a judge, and the dockets of federal courts. I have no notes, transcript, or recording. The address of San Jose State University is One Washington Square, San Jose, California 95192.

January 18, 2012: Panelist, District Judges Panel, The New Northern District of California Patent Pilot Program, Federal Bar Association, Federal Circuit Bar Association, and Stanford Law School Program in Law, Science & Technology, Stanford Law School, Stanford, California. Notes supplied.

January 12, 2012: Panelist, Technology and Law Discussion Panel, 2012 Students' Silicon Valley Trip, Claremont McKenna College, Information Technology Advisory Board, East Palo Alto, California. Notes supplied.

December 8, 2011: Panelist, Judicial Panel, Advanced Patent Law Institute, East Palo Alto, California. Notes supplied.

December 5, 2011: Speaker, Swearing-In Ceremony and Reception, Santa Clara University, Santa Clara County Bar Association, Santa Clara, California. Notes supplied.

November 15, 2011: Speaker, Remedies Class and Student Intellectual Property Law Association, Santa Clara University School of Law, Santa Clara, California. Notes supplied.

October 24, 2011: Speaker, American Constitution Society, San Francisco, California. Notes supplied.

October 12, 2011: Attendee, Judges' Dinner, Asian American Bar Association of the Greater Bay Area Judiciary Committee, San Francisco, California. I do not recall specifics, but I believe I may have spoken about how to become a judge. I have no notes, transcript, or recording. The address of the Asian American Bar Association of the Greater Bay Area is 575 Market Street, Suite 2125, San Francisco, California 94105.

September 3, 2011: Speaker, Luncheon Keynote Speech, National Convention, Hispanic National Bar Association, Dallas, Texas. Notes supplied.

August 20, 2011: Speaker, Grand Opening, Silicon Valley Korean Community Center, San Jose, California. Notes supplied.

August 6, 2011: Speaker, Liberty Award Acceptance Speech, Institute for Corean-American Studies Liberty Foundation, Bluebell, Pennsylvania. Notes supplied.

May 5, 2011: Speaker, Tribute to Judge Jeremy Fogel, Federal Judge of the Year, Judges' Night 2011, Santa Clara County Trial Lawyers Association, San Jose, California. Notes supplied.

April 16, 2011: Speaker, Brunch, American Constitution Society of Stanford Law School, Federalist Society, and Asian Pacific Islander Law Students Association, Stanford, California. Notes supplied.

April 13, 2011: Panelist, "Building Bridges: Connecting Women of Color in Law," University of California, Berkeley, School of Law Women of Color Collective, Berkeley, California. Notes supplied.

April 10, 2011: Panel Moderator, "Managing Mega and High Profile Cases: Opportunities and Traps," Northern District Judicial Conference, Monterey, California. Notes supplied.

March 18, 2011: Panelist, "Intellectual Property in the Courtroom: Issues District Judges Face with Significant IP Dockets," Intellectual Property Panel Symposium, George Washington University Law School, San Francisco, California. Notes supplied.

March 15, 2011: Panelist, "New Judicial Assignments in Northern California Courtrooms," Association of Business Trial Lawyers, San Francisco, California. Notes supplied.

February 11, 2011: Judge, Galloway Moot Court Competition Final Round, Santa Clara University School of Law, Santa Clara, California. I was a volunteer judge at the competition. I have no notes, transcript, or recording. The address of Santa Clara University School of Law is 500 El Camino Real, Santa Clara, California 95053.

February 5, 2011: Keynote Speaker, Bay Area Asian Pacific American Law Students Association Conference, Golden Gate University School of Law, San Francisco, California. Notes supplied.

January 21, 2011: Judge, Marion Rice Kirkwood Moot Court Competition Semifinal Round, Stanford Law School, Stanford, California. I was a volunteer judge at the competition. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford,

California 94305.

December 14, 2010: Speaker, 2010 Judge of the Year Award, San Francisco La Raza Lawyers Association, San Francisco, California. Notes supplied.

December 9, 2010: Panelist, Judges Panel, 11th Annual Silicon Valley Advanced Patent Law Institute, East Palo Alto, California. Notes supplied.

December 7, 2010: Speaker, Swearing-In Ceremony for New Bar Admits, Santa Clara County Bar Association, East Palo Alto, California. Notes supplied.

December 3, 2010: Speaker, Swearing-In Ceremony for New Bar Admits, University of San Francisco School of Law, San Francisco, California. Notes supplied.

December 1, 2010: Panelist, "A View from the Bench: A Candid Discussion with Your Federal Judges and Magistrates," Santa Clara County Bar Association, San Jose, California. Notes supplied.

November 20, 2010: Panelist, "Convincing the Judge – Best Practices," National Convention, National Asian Pacific American Bar Association, Los Angeles, California. Notes supplied.

November 20, 2010: Panelist, "California Inspires! Tales of Making It to the Top," National Convention, National Asian Pacific American Bar Association, Los Angeles, California. Notes supplied.

November 20, 2010: Judge, Thomas Tang International Moot Court Competition, National Asian Pacific American Bar Association, Los Angeles, California. I was a volunteer judge at the 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.

November 20, 2010: Speaker, 2010 Women's Leadership Award, National Convention, National Asian Pacific American Bar Association, Los Angeles, California. Notes supplied.

November 19, 2010: Speaker, Korean American Bar Associations of Southern California and Northern California and International Association of Korean Lawyers Reception, National Convention, National Asian Pacific American Bar Association, Los Angeles, California. Notes supplied.

November 10, 2010: Panelist, Bay Area Judges Panel, Asian American Bar Association of the Greater Bay Area, San Francisco, California. The panel discussed how to become a judge. I have no notes, transcript, or recording. The address of the Asian American Bar Association of the Greater Bay Area is 575

Market Street, Suite 2125, San Francisco, California 94105.

November 5, 2010: Panelist, "Judicial Perspectives on the Effective Use of Interpreters in the Courtroom," 17th Annual Judges Panel, Asian Pacific American Bar Association of Silicon Valley, San Jose, California. Notes supplied.

October 23, 2010: Judge, Thomas Tang International Moot Court Competition San Francisco Regionals Semifinal Round, National Asian Pacific American Bar Association, San Francisco, California. I was a volunteer judge at the 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.

October 18, 2010: Panelist, "Judicial Perspectives on Patent Damages," Federal Circuit Bar Association and the Berkeley Center for Law & Technology, Berkeley, California. Notes supplied.

October 15, 2010: Speaker, 2010 Trailblazer Award, Annual Scholarship Banquet, Asian Pacific American Bar Association of Silicon Valley, East Palo Alto, California. Notes supplied.

October 14, 2010: Panel Moderator, "Best Practices in Presiding Over Patent Cases," National Convention, National Association of Women Judges, San Francisco, California. Notes supplied.

September 30, 2010: Speaker, Induction Ceremony Speech, United States District Court for the District of Northern California, San Jose, California. Notes supplied.

November 21, 2009: Judge, Thomas Tang International Moot Court Competition, National Asian Pacific American Bar Association, Boston, Massachusetts. I was a volunteer judge at the 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.

November 20, 2009: Speaker, Trailblazer Award Ceremony, National Convention, National Asian Pacific American Bar Association, Boston, Massachusetts. Notes supplied.

November 18, 2009: Panelist, Judicial Externship Panel, Santa Clara University Law School Black Law Students Association, Santa Clara, California. Notes supplied.

November 17, 2009: Panelist, "An Evening of Insightful Conversation with Some of the Most IP-Savvy Judges in California," Chiefs of Intellectual Property

(ChIPs), Menlo Park, California. Notes supplied.

November 6, 2009: Panelist, Judges Panel, Asian Pacific Bar Association of Silicon Valley, San Jose, California. Notes supplied.

October 1, 2009: Visiting Instructor, Trial Advocacy Workshop, Stanford Law School, Stanford, California. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

September 24, 2009: Panelist, Judges Panel on the State Judicial Appointment Process, Santa Clara County Bar Association, San Jose, California. Notes supplied.

August 8, 2009: Panelist, Diversity Career Fair Panel, Bar Association of San Francisco and Orrick Herrington & Sutcliffe LLP, San Francisco, California. Notes supplied.

August 4, 2009: Speaker, Discussion of Law School Application Process and Legal Careers, Youth Leadership Academy, Asian Pacific American Leadership Institute, De Anza Community College, Cupertino, California. I do not recall specifics, but I believe I spoke about how to apply to law school and career paths in the law. I have no notes, transcript, or recording. The address of De Anza Community College is 21250 Stevens Creek Boulevard, Cupertino, California 95014.

July 10, 2009: Panelist, Career Panel, Pre-Law Diversity Day at Court, Santa Clara County Superior Court, San Jose, California. I spoke about career paths in the law. I have no notes, transcript, or recording. The address of Santa Clara County Superior Court is 191 North First Street, San Jose, California 95113.

June 5, 2009: Panelist, "Developing Your Oral Argument Style," California Women Lawyers' Conference, Half Moon Bay, California. Notes supplied.

April 30, 2009: Keynote Speaker, Korean Community Center of the East Bay, Oakland, California. Notes supplied.

April 21, 2009: Judge, Trial Techniques Class, Santa Clara University School of Law, San Jose, California. I was a volunteer judge for this class. I have no notes, transcript, or recording. The address of Santa Clara University School of Law is 500 El Camino Real, Santa Clara, California 95053.

April 14, 2009: Keynote Speaker, National Association of Professional Asian American Women and Center for Medicare & Medicaid Services/Health and Human Services, National Training Conference & Small Business Exposition, Baltimore, Maryland. Notes supplied.

April 1, 2009: Judge, Marion Rice Kirkwood Moot Court Competition Quarterfinal Round, Stanford Law School, Stanford, California. I was a volunteer judge at the competition. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

March 12, 2009: Judge, Speak and Lead with Pride Program High School Speech Contest, Organization of Chinese Americans, Inc. Peninsula Chapter of San Mateo County, San Mateo, California. I was a volunteer judge of this contest. I have no notes, transcript, or recording. The address of the Organization of Chinese Americans, Inc. Peninsula Chapter of San Mateo County is P.O. Box 218, San Mateo, California 94401.

February 22, 2009: Panelist, "Asian Americans and the Judiciary," Bay Area Asian Pacific American Law Students Association, San Francisco, California. Notes supplied.

February 5, 2009: Judge, Santa Clara County High School Mock Trial, Santa Clara County Bar Association and Santa Clara County Office of Education, San Jose, California. I was a volunteer judge at the competition. I have no notes, transcript, or recording. The address of the Santa Clara County Bar Association is 31 North Second Street, Suite 400, San Jose, California 95113. The address of the Santa Clara County Office of Education is 1290 Ridder Park Drive, San Jose, California 95131.

November 21, 2008: Judge, Thomas Tang International Moot Court Competition, National Asian Pacific American Bar Association, Seattle, Washington. I was a volunteer judge at the 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.

November 12, 2008: Panelist, Judges Panel on Judicial Careers, Asian American Bar Association of the Greater Bay Area, San Francisco, California. I do not recall specifics, but I believe I spoke about how to become a judge. I have no notes, transcript, or recording. The address of the Asian American Bar Association of the Greater Bay Area is 575 Market Street, Suite 2125, San Francisco, California 94105.

November 11, 2008: Speaker, Brief Remarks After Administering Oath of Office to Trustees, San Jose/Evergreen Community College District, San Jose, California. Notes supplied.

November 7, 2008: Panelist, Views from the Bench: Effective Written & Oral Advocacy, Asian Pacific Bar Association of Silicon Valley, San Jose, California. Notes supplied.

November 3, 2008: Visiting Instructor, Trial Advocacy Workshop, Stanford Law School, Stanford, California. I spoke about what makes an effective closing argument. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

October 23, 2008: Panelist, Career Panel, Korean American Bar Association of Northern California and University of California-Hastings' Korean-American Law Students Association, San Francisco, California. Notes supplied.

September 20, 2008: Panelist, Oral Presentation Skills, Women's Leadership Summit, Harvard Law School, Cambridge, Massachusetts. Notes supplied.

September 19, 2008: Speaker, Mugunghwa Award, Inaugural Annual Dinner and Installation Ceremony, Korean American Bar Association of San Diego & Korean American Coalition of San Diego, San Diego, California. Notes supplied.

September 13, 2008: Panelist, Judges Panel on Judicial Careers and Trial Skills, Annual Conference, International Association of Korean Lawyers, Philadelphia, Pennsylvania. Notes supplied.

May 9, 2008: Panelist, Law Day School Visits, Santa Clara County Superior Court and After-School All-Stars, San Jose, California. I spoke about careers in the law to students at Joseph George Middle School. I have no notes, transcript, or recording. The address of the Santa Clara County Superior Court is 191 North First Street, San Jose, California 95113. The address of After-School All-Stars is 5900 Wilshire Boulevard, Suite 2000, Los Angeles, California 90036.

April 16, 2008: Judge, Trial Techniques Class, Santa Clara University School of Law, San Jose, California. I was a volunteer judge for this class. I have no notes, transcript, or recording. The address of Santa Clara University School of Law is 500 El Camino Real, Santa Clara, California 95053.

April 1, 2008: Judge, Marion Rice Kirkwood Moot Court Competition Preliminary Round, Stanford Law School, Stanford, California. I was a volunteer judge at the competition. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

February 5, 2008: Judge, Santa Clara County High School Mock Trial, Santa Clara County Bar Association and Santa Clara County Office of Education, San Jose, California. I was a volunteer judge at the competition. I have no notes, transcript, or recording. The address of the Santa Clara County Bar Association is 31 North Second Street, Suite 400, San Jose, California 95113. The address of the Santa Clara County Office of Education is 1290 Ridder Park Drive, San Jose,

California 95131.

November 8, 2007: Panelist, Path to Success Career Panel, University of San Francisco Korean American Law Students Association, San Francisco, California. Notes supplied.

September 27, 2007: Speaker, Introduction of Award Recipient and Scholarship Reception Keynote Speaker, Asian Pacific Bar Association of Silicon Valley, San Jose, California. Notes supplied.

February 17, 2007: Panelist, Women in the Law Panel, North American South Asian Law Student Association, San Francisco, California. I spoke about careers in the law. I have no notes, transcript, or recording. The North American South Asian Law Student Association has no mailing address.

October 2006: Judge, Thomas Tang International Moot Court Regional Competition, National Asian Pacific American Bar Association, Palo Alto, California. I was a volunteer judge at the 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.

March 9, 2006: Panelist, Career Panel, Women's Leadership & Mentoring Luncheon, McDermott Will & Emery LLP, Palo Alto, California. I spoke about work-life balance. I have no notes, transcript, or recording. The address of McDermott Will & Emery LLP is 275 Middlefield Road, Suite 100, Menlo Park, California 94025.

October 27, 2005: Panelist, Diversity Panel, Santa Clara University Asian Pacific American Law Students Association, Santa Clara, California. Notes supplied.

February 10, 2001: Panelist, Public Interest and Government Career Panel, Bay Area Asian Pacific American Law Students Association, Stanford, California. I spoke about careers in the law. I have no notes, transcript, or recording. The Bay Area Asian Pacific American Law Students Association has no mailing address.

April 4, 1998: Panelist, Career Panel, 1998 Asian American Career Day, Asian Professional Exchange, Los Angeles, California. I spoke about careers in the law. I have no notes, transcript, or recording. The address of the Asian Professional Exchange is 1137 Wilshire Boulevard, Los Angeles, California 90017.

November 2, 1996: Panelist, Career Paths to Consider in Law and Public Policy Panel, Women and the Law Public Leadership Career Conference, Public Leadership Education Network, Washington, District of Columbia. I spoke about careers in the law and public policy. I have no notes, transcript, or recording. The address of the Public Leadership Education Network is 1875 Connecticut

Avenue, Northwest, Tenth Floor, Washington, District of Columbia 20009.

March 30, 1996: Panelist, Immigrant Legislation, Korean American Students Conference, University of Texas, Austin, Texas. Notes supplied.

March 3, 1996: Panelist, Asian Pacific American Issues Roundtable, Organization of Chinese Americans and Japanese American Citizens League Leadership Conference, Washington, District of Columbia. I spoke about immigration legislation. I have no notes, transcript, or recording. The address of the Organization of Chinese Americans is 1322 18th Street, Northwest, Washington, District of Columbia 20009. The address of the Japanese American Citizens League is 1629 K Street, Northwest, Washington, District of Columbia 20006.

November 4, 1995: Panelist, Career Paths to Consider in Law and Public Policy Panel, Women and the Law Public Leadership Career Conference, Public Leadership Education Network, Washington, District of Columbia. I spoke about careers in the law and public policy. I have no notes, transcript, or recording. The address of the Public Leadership Education Network is 1875 Connecticut Avenue, Northwest, Tenth Floor, Washington, District of Columbia 20009.

October 18, 1995: Panelist, Annual Career Panel, Korean Association of Harvard Law School, Cambridge, Massachusetts. I spoke about careers in the law. I have no notes, transcript, or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

October 23, 1992: Panelist, Panel on Diversity, Harvard Law School Alumni Reunion, Harvard Law School, Cambridge, Massachusetts. I spoke about careers in the law. I have no notes, transcript, or recording, but press coverage is supplied. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

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.

Susan Oki Mollway, THE FIRST FIFTEEN: HOW ASIAN AMERICAN WOMEN BECAME FEDERAL JUDGES 68–76 (Chapter 5) (forthcoming publication expected Sept. 30, 2021). Copy supplied.

Alumni Voices, Committee on Degrees in Social Studies Website, Harv. Univ. (Oct. 9, 2018). Copy supplied.

Sheri Qualters, *Model Order Would Cut Patent Fights Down to Manageable Size*, NAT'L L.J. (July 23, 2013). Copy supplied.

John Roemer, *Pilot Program Just in Time for Red-Hot Patent Cases*, DAILY J. (Sept. 6, 2012). Copy supplied.

2008 Women of Influence in Silicon Valley, SILICON VALLEY/SAN JOSE BUS. J.: SPECIAL SUPP. (Feb. 29, 2008). Copy supplied.

Evan Hill, *Bench Pick Limits S.C. Race*, RECORDER (Jan. 28, 2008). Copy supplied.

President's Profiles, ASIAN AM. BAR ASS'N OF GREATER BAY AREA NEWSL. (Nov. 2007). Copy supplied.

Zanto Peabody, *Agoura Hills Man Pleads Guilty in Federal Court in Stock Fraud Case*, L.A. TIMES (Aug. 8, 2000). Copy supplied.

Woman Charged with Fraud in Equity-Skimming Case, L.A. TIMES (Aug. 5, 2000). Copy supplied.

Rob O'Neil, *Valley Roundup; Westlake Village; Woman Indicted in Federal Fraud Case*, L.A. TIMES (Valley Ed.) (Aug. 5, 2000). Copy supplied.

Ostrich Scam, CITY NEWS SERV. (Mar. 8, 2000). Copy supplied.

Cecilia Chan, *Grand Jury Indicts Pair in Tax Case*, DAILY NEWS OF L.A. (Apr. 16, 1999). Copy supplied.

Eleanor Kerlow, POISONED IVY: HOW EGOS, IDEOLOGY, AND POWER POLITICS ALMOST RUINED HARVARD LAW SCHOOL 281–82, 290 (1994). Copy supplied.

Rajath Shourie, *Law Faculty Gives Tenure to Ogletree*, HARV. CRIMSON (June 7, 1993). Copy supplied.

Rajath Shourie, *Law School Graffiti Addresses Diversity*, HARV. CRIMSON (Mar. 5, 1993). Copy supplied.

Rajath Shourie, *Law Students Hold Vigil for MacKinnon*, HARV. CRIMSON (Feb. 27, 1993). Copy supplied.

Evan J. Eason, *Law School Will Hire Woman Prof*, HARV. CRIMSON (Feb. 6, 1993). Copy supplied.

Toy Chandler, *CCR Holds Discussion with Rudenstine*, HARV. L. REC. (Nov. 20, 1992). Copy supplied.

Rob Weissman, *Students Hold Silent Vigil: Protesters Later Meet with President Rudenstine*, HARV. L. REC. (Oct. 23, 1992). Copy supplied.

Rajath Shourie, *Ad Board Votes to Warn Law School Protesters*, HARV. CRIMSON (May 11, 1992). Copy supplied.

Elizabeth A. Brown, *Harvard School of Law Sued Lack of Teachers from Minorities Is Said to Deprive Students of a 'Variety of Perspectives' Needed for the 'Best Possible' Law Education New Impetus for Campus Rights*, CHRISTIAN SCI. MONITOR (Dec. 26, 1990). Copy supplied.

Grande Lum, *Harvard Hosts Napalsa*, HARV. L. REC. (Nov. 2, 1990). Copy supplied.

Philip M. Rubin, *Law Students Picket Interviews*, HARV. CRIMSON (Oct. 10, 1990). Copy supplied.

Philip M. Rubin, *Seniors Give More to E4D, Less to Class Gift*, HARV. CRIMSON (June 6, 1990). Copy supplied.

Jeffrey C. Wu, *Council Avoids a Sticky Constitutional Debate: Alternative Parents Weekend*, HARV. CRIMSON (Mar. 3, 1990). Copy supplied.

Maggie S. Tucker, *Students Rally for Minority Hiring as Visiting Parents Look On*, HARV. CRIMSON (Mar. 3, 1990). Copy supplied.

Arnold E. Franklin, *Council Plans Different Parents Weekend Events*, HARV. CRIMSON (Feb. 23, 1990). Copy supplied.

Daniel B. Baer, *Where Is Faculty Hiring This Fall?*, HARV. CRIMSON (Nov. 14, 1989). Copy supplied.

Council Elections Begin, HARV. CRIMSON (Oct. 5, 1989). Copy supplied.

Evolution to Activism Falls Short in the End: The Undergraduate Council, HARV. CRIMSON (June 8, 1989). Copy supplied.

John T. Dickson, *Protesters Court Faculty*, HARV. CRIMSON (May 3, 1989). Copy supplied.

The Benefit of Scholarship Aid: Students Report the Ways Scholarships Have Helped Them, HARV. COLL. FUND REP. (Spring 1989). Copy supplied.

Harvard: The Flames of Student Protest Still Flicker, N.Y. TIMES (Mar. 19, 1989). Copy supplied.

Emily Huang, *Report Urges Hiring Reform*, HARV. INDEP. (Mar. 9, 1989). Copy supplied.

Joseph R. Palmore, *'No Room for Student Input,' Activists Say*, HARV. CRIMSON (Mar. 4, 1989). Copy supplied.

Joanne Ball, *Harvard Poised for Report on Minorities; Undergraduates Fault Faculty Recruitment*, BOS. GLOBE (Jan. 31, 1989). Copy supplied.

Susan B. Glasser, *Committee Debates Hiring of Women, Minority Profs*, HARV. CRIMSON (Dec. 8, 1988). Copy supplied.

Judy Williams, *UC Enters Minority Hiring Debate*, HARV. INDEP. (Dec. 1988). Copy supplied.

Jeremy L. Hirsh, *College to Pay Student for Collecting Papers*, HARV. CRIMSON (Dec. 7, 1988). Copy supplied.

Joseph R. Palmore, *Council Calls for More Minority, Women Faculty*, HARV. CRIMSON (Dec. 5, 1988). Copy supplied.

Joseph R. Palmore, *Council Joins Debate on Faculty Diversity*, HARV. CRIMSON (Dec. 1, 1988). Copy supplied.

Joseph R. Palmore, *Council to Increase Divestment Pressure*, HARV. CRIMSON (Nov. 21, 1988). Copy supplied.

Joseph R. Palmore, *Council Asks Harvard to Recognize Union*, HARV. CRIMSON (Oct. 31, 1988). Copy supplied.

Prasad Jallepalli, *Council Asks University to Drop Union Challenge*, HARV. INDEP. (Oct. 27, 1988). Copy supplied.

Mark David Williams, *What UC Is What U Got* (Fall 1988). I do not know whether this article is from the Harvard Crimson or the Harvard Independent. Copy supplied.

I have been interviewed on several occasions by Korean language media for human interest stories about my appointments to the bench and my public service as a federal prosecutor. Please see the English-language translations of the titles of responsive articles below. I do not have English-language versions of these articles.

First Korean American Woman Federal Judge Ceremony, KOREA DAILY (San Francisco) (Oct. 2, 2010). Copy supplied.

Asian Women Should Overcome Their Challenges with Self-Development and Enthusiastic Activity, KOREA DAILY (Los Angeles) (Apr. 15, 2009). Copy

supplied.

'Wishing to Preside and Administer Justice Correctly': The Appointment Celebration of Santa Clara County Superior Court Judge Lucy Koh, KOREA TIMES (Mar. 22, 2008). Copy supplied.

Birth of a Korean Woman Judge, Celebration for Minorities: Ceremony on [March] 20th for Lucy Koh's Inauguration Day for Judgeship... 400 Korean and American Attendees at Momentous Celebration, KOREA DAILY (Mar. 22, 2008). Copy supplied.

'Even Having Ten Bodies Would Be Insufficient': Last Month's Appointed Santa Clara County Judge Lucy Koh, KOREA DAILY (Feb. 14, 2008). Copy supplied.

Choosing the Judiciary Path and Surrendering High Annual Salary: Santa Clara County Court Judge Lucy Koh, KOREA DAILY (San Francisco) (Feb. 1, 2008). Copy supplied.

Swearing-In Ceremony of Santa Clara County Superior Court Judge Lucy Koh, KOREA TIMES (Los Angeles) (Jan. 30, 2008). Copy supplied.

Choosing the Judiciary Path and Surrendering High Annual Salary: Santa Clara County Court Judge Lucy Koh, KOREA DAILY (Los Angeles) (Jan. 30, 2008). Copy supplied.

Santa Clara County – Birth of the First Korean Woman Judge, KOREA DAILY (San Francisco) (Jan. 28, 2008). Copy supplied.

'Concerned About Human Problems and Public Service': Santa Clara County Superior Court Judge Appointee, Lucy Koh, KOREA TIMES (San Francisco) (Jan. 28, 2008). Copy supplied.

The Birth of a Korean Woman Judge: Attorney Lucy Koh Appointed, KOREA DAILY (Los Angeles) (Jan. 26, 2008). Copy supplied.

News Interview: Prosecution of Tax Fraud Case, FM Seoul Radio Broadcast (Apr. 15, 1999). I am unable to locate any notes, transcript, or recording from the interview.

'I Try to Do My Utmost in Enforcing the Law and Making Sure Justice Is Achieved': (Los Angeles-Based) U.S. Federal Prosecutor Lucy Koh, KOREA TIMES (Los Angeles) (Jan. 26, 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 served as a United States District Judge for the Northern District of California since June 9, 2010. A U.S. District Court is an Article III court of general jurisdiction consistent with the Constitution and statutes of the United States.

In January 2008, Governor Arnold Schwarzenegger appointed me to the California Superior Court for the County of Santa Clara. I served as a Superior Court Judge until my appointment to the U.S. District Court. The California Superior Courts have unlimited jurisdiction in criminal, civil, juvenile delinquency, juvenile dependency, and family law matters.

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

As a U.S. District Judge, I have presided over 48 trials that have gone to verdict or judgment. As a Santa Clara County Superior Court Judge, I presided over 223 trials that went to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	20%
bench trials:	80%
civil proceedings:	87.5%
criminal proceedings:	12.5%

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

See attached lists 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 (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *In Re: Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK (N.D. Cal.)

This is a Multi-District Litigation involving 32 data breach class action lawsuits filed against Yahoo nationwide. I appointed lead plaintiffs' counsel in February 2017. I granted in part and denied in part motions to dismiss in 2017 and 2018. The parties filed their first motion for preliminary approval of class action settlement in October 2018. I denied this motion on several grounds. Among other things, I found that the settlement's release of claims was inadequately

disclosed and overbroad. Accordingly, the parties amended their settlement and filed a second motion for preliminary approval of a $117.5 million class action settlement. I preliminarily approved and then finally approved this amended settlement in 2019 and 2020, respectively. To maximize class members' recovery, I trimmed the plaintiffs' attorneys' fees.

The orders on the motions to dismiss are 2017 WL 3727318 (N.D. Cal. Aug. 30, 2017), and 313 F. Supp. 3d 1113 (N.D. Cal. 2018). The order initially denying preliminary approval is 2019 WL 387322 (N.D. Cal. Jan. 30, 2019). The order granting final approval and reducing the requested attorneys' fees is 2020 WL 4212811 (N.D. Cal. July 22, 2020).

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2. *Daniel Miranda and Landmark Protection, Inc. v. U.S. Sec. Assocs., Inc.*, No. 18-CV-734-LHK (N.D. Cal.)

This case involved nonpayment of wages, breach of employment agreement, and open book account claims under California law as well as breach of asset purchase agreement and breach of covenant of good faith and fair dealing claims under Delaware law. In 2019, I denied the defendant's motion for summary judgment, ruled on motions in limine and evidentiary objections, presided over a jury trial, and denied the defendant's motions for judgment as a matter of law. After the jury verdict, I awarded prejudgment interest and waiting time penalties. The parties settled as to the plaintiff's attorneys' fees and stipulated to dismiss the case with prejudice.

The order denying the defendant's motion for summary judgment is 2019 WL 1960351 (N.D. Cal. May 2, 2019). The order ruling on the parties' motions in limine is 2019 WL 2929966 (N.D. Cal. July 8, 2019). The order denying the defendant's motion for judgment as a matter of law is *Miranda v. U.S. Sec. Assocs., Inc.*, No. 18-CV-00734-LHK, No. 161 (N.D. Cal. Aug. 8, 2019) (copy supplied). The order awarding prejudgment interest and waiting time penalties is *Miranda v. U.S. Sec. Assocs., Inc.*, No. 18-CV-00734-LHK, No. 183 (N.D. Cal.

Aug. 15, 2019) (copy supplied).

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3. *Apple, Inc. v. Samsung Elecs. Co. Ltd.*, No. 11-CV-01846-LHK (N.D. Cal.)

This dispute involved claims of patent and trademark infringement, trade dress dilution, antitrust and contractual violations, and unfair competition. In 2011, I ordered expedited discovery and denied a preliminary injunction. After ruling on motions to dismiss, claim construction, *Daubert* motions, spoliation of evidence motions, summary judgment motions, and pre-trial motions, I presided over a jury trial in 2012 that resulted in a damages award of over $1 billion. In 2012 to 2013, I ruled on numerous post-trial motions including one ordering a damages retrial for certain patents and certain products and another denying a permanent injunction. The Federal Circuit reversed and remanded both injunction orders. In 2013, I presided over a damages jury retrial. In 2014, I ruled on numerous post-trial motions and denied a permanent injunction. The parties did not appeal the denial of the permanent injunction. In 2015, the Federal Circuit invalidated Apple's trade dresses. As a result, I scheduled a March 2016 retrial on patent damages for five products. However, I stayed the case when the Supreme Court of the United States granted certiorari in March 2016.

In December 2016, the U.S. Supreme Court reversed the Federal Circuit's method of calculating design patent damages and remanded. In February 2017, the Federal Circuit remanded the case to determine if Samsung had waived the design patent damages issue, and if not, to determine the proper method of calculating design patent damages and whether a new trial was necessary. In July 2017, I found that Samsung had not waived the design patent damages issue.

In October 2017, I held that a new trial with the correct method of calculating design patent damages was necessary. After ruling on summary judgment, motions to exclude expert reports and testimony, and on motions in limine, I presided over a jury trial in May 2018. The jury awarded design patent damages

totaling over $538 million. The parties settled and stipulated to dismissal in June 2018 before I ruled on post-trial motions.

In total, I have issued approximately 120 substantive orders in this case. Below are citations to significant orders. The orders on motions to dismiss are 2011 WL 4948567 (N.D. Cal. Oct. 18, 2011), and 2012 WL 1672493 (N.D. Cal. May 14, 2012). The claim construction order is 2012 WL 1123752 (N.D. Cal. Apr. 4, 2012). The order granting-in-part and denying-in-part the parties' motions to exclude experts is 2012 WL 2571332 (N.D. Cal. June 30, 2012). The order finding that both parties spoliated evidence is 888 F. Supp. 2d 976 (N.D. Cal. 2012). The summary judgment orders are 2012 WL 2571719 (N.D. Cal. June 30, 2012) (order denying Samsung's motion for summary judgment), and 876 F. Supp. 2d 1141 (N.D. Cal. 2012) (order granting-in-part and denying-in-part Apple's motion for summary judgment). The post-trial orders from the previous trials are 909 F. Supp. 2d 1147 (N.D. Cal. 2012) (order denying permanent injunction), *aff'd in part, vacated in part*, 735 F.3d 1352 (Fed. Cir. 2013); 2012 WL 6574785 (N.D. Cal. Dec. 17, 2012) (order regarding juror misconduct); 2013 WL 11675 (N.D. Cal. Jan. 1, 2013) (order denying motion to stay); 932 F. Supp. 2d 1076 (N.D. Cal. 2013) (order regarding indefiniteness); 920 F. Supp. 2d 1079 (N.D. Cal. 2013) (order granting-in-part and denying-in-part Samsung's motion for judgment as a matter of law), *aff'd in part, rev'd in part*, 786 F.3d 983 (Fed. Cir. 2015); 920 F. Supp. 2d 1116 (N.D. Cal. 2013) (order granting-in-part and denying-in-part Apple's motion for judgment as a matter of law); 2013 WL 412862 (N.D. Cal. Jan. 29, 2013) (order denying damages enhancements); 926 F. Supp. 2d 1100 (N.D. Cal. 2013) (order regarding damages); 2014 WL 549324 (N.D. Cal. Feb. 7, 2014) (order denying cross-motions for judgment as a matter of law); and 2014 WL 976898 (N.D. Cal. Mar. 6, 2014) (order denying permanent injunction).

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4. *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-2617 LHK (N.D. Cal.)

This was a Multi-District Litigation involving 129 data breach class action

lawsuits filed against Anthem and Blue Cross Blue Shield insurance companies nationwide. In 2015, I appointed lead plaintiffs' counsel, granted a motion to remand, and denied two motions to remand. In 2016, I granted in part and denied in part two motions to dismiss. The parties fully briefed the issue of class certification, but reached a class action settlement for $115 million prior to the class certification ruling. In 2017, I granted preliminary approval of the class action settlement. The plaintiffs then moved for final approval of the class action settlement and for attorneys' fees. I appointed a Special Master to conduct a review of the plaintiffs' billing records. In 2018, I granted final approval of the class action settlement and reduced the plaintiffs' attorneys' fees in order to maximize class members' recovery.

The orders on the motions to dismiss are 162 F. Supp. 3d 953 (N.D. Cal. 2016), and 2016 WL 3029783 (N.D. Cal. May 27, 2016). The order granting preliminary approval is 2017 WL 3730912 (N.D. Cal. Aug. 25, 2017). The order granting final approval is 327 F.R.D. 299 (N.D. Cal. 2018). The order adopting in part the Special Master's report and recommendation regarding the motion for attorneys' fees and costs is 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018).

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5. *Apple, Inc. v. Samsung Elecs. Co. Ltd.*, No. 12-CV-00630 LHK (N.D. Cal.)

This dispute involved cross-claims of patent infringement as well as claims of antitrust and contractual violations. In July 2012, I granted a preliminary injunction, which the Federal Circuit reversed. In 2013 and 2014, I construed the patent's claims and ruled on summary judgment and *Daubert* motions. In 2014, I

presided over a jury trial that resulted in a damages award of over $119 million. I also ruled on pretrial and post-trial motions. I denied a permanent injunction, which the Federal Circuit reversed. In February 2016, the Federal Circuit affirmed the judgments and verdicts as to four patents, but reversed the judgments and jury verdicts for three Apple patents that were the bases for the permanent injunction that the Federal Circuit ordered that I enter.

However, in October 2016, the Federal Circuit en banc reversed the Federal Circuit panel, upheld the judgment and verdicts for the three reversed Apple patents, and remanded the issue of willful infringement in light of an intervening U.S. Supreme Court case. In June 2017, I concluded that the jury's finding of willfulness was supported by substantial evidence and granted a moderate award of enhanced damages. In February 2018, I granted in part and denied in part Apple's motion for ongoing royalties, thereby awarding Apple $6,494,252 in royalties. Final judgment was entered in April 2018.

Below are citations to significant orders. The order granting a preliminary injunction is 877 F. Supp. 2d 838 (N.D. Cal. 2012), *rev'd and remanded*, 695 F.3d 1370 (Fed. Cir. 2012). The claim construction orders are 2013 WL 1502181 (N.D. Cal. Apr. 10, 2013), and 2014 WL 1322028 (N.D. Cal. Mar. 28, 2014). The order on cross-motions for summary judgment is 2014 WL 252045 (N.D. Cal. Jan. 21, 2014). The order granting-in-part and denying-in-part the parties' motions to exclude experts is 2014 WL 794328 (N.D. Cal. Feb. 25, 2014). The post-trial orders are 2014 WL 12776506 (N.D. Cal. Aug. 21, 2014) (order denying judgment of invalidity); 2014 WL 7496140 (N.D. Cal. Aug. 27, 2014) (order denying permanent injunction), *vacated and remanded*, 809 F.3d 633 (Fed. Cir. 2015); 67 F. Supp. 3d 1100 (N.D. Cal. 2014) (order granting-in-part and denying-in-part Apple's motion for judgment as a matter of law), *aff'd in part, vacated in part*, 816 F.3d 788 (Fed. Cir.), *aff'd in part and remanded in part on en banc reh'g*, 839 F.3d 1034 (Fed. Cir. 2016) (en banc); 2014 WL 4467837 (N.D. Cal. Sept. 9, 2014) (order granting-in-part and denying-in-part Samsung's motion for judgment as a matter of law), *aff'd in part, rev'd in part*, 816 F.3d 788 (Fed. Cir. 2016); 2014 WL 6687122 (N.D. Cal. Nov. 25, 2014) (order granting-in-part Apple's motion for ongoing royalties); and *Apple, Inc. v. Samsung Elecs. Co., Ltd.*, No. 12-CV-00630-LHK, No. 2157 (N.D. Cal. Jan. 18, 2016) (order entering permanent injunction) (copy supplied).

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6. *In re High Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK (N.D. Cal.)

This case was a consolidation of five antitrust class action lawsuits. In 2012, I granted in part and denied in part a motion to dismiss. In 2013, I denied with leave to amend class certification and denied in part and granted in part the parties' various motions to strike expert reports and evidence. Later in 2013, I certified a damages class and preliminarily approved the plaintiffs' $20 million settlement with Intuit, Lucasfilm, and Pixar. In 2014, the Ninth Circuit denied review of my class certification order. Also in 2014, I denied six summary judgment motions, denied the defendants' motion to exclude the plaintiffs' expert report, and denied in part and granted in part the defendants' motion to strike the plaintiffs' expert report. In 2014, I granted final approval to the plaintiffs' settlement with Intuit, Lucasfilm, and Pixar, but denied preliminary approval of the plaintiffs' $324.5 million settlement with Apple, Google, Intel, and Adobe. In 2015, I granted preliminary and final approval of the plaintiffs' new $415 million settlement with Apple, Google, Intel, and Adobe.

Below are citations to significant orders. The order on both motions to dismiss is 856 F. Supp. 2d 1103 (N.D. Cal. 2012). The orders on class certification are 289 F.R.D. 555 (N.D. Cal. 2013) (order denying class certification and granting-in-part and denying-in-part motions to strike expert reports), and 985 F. Supp. 2d 1167 (N.D. Cal. 2013) (order granting motion for class certification). The order denying the defendants' six motions for summary judgment is 2014 WL 1283086 (N.D. Cal. Mar. 28, 2014). The order granting final approval of the plaintiffs' settlement with Pixar, Lucasfilm, and Intuit is 2014 WL 10520477 (N.D. Cal. May 16, 2014). The order denying preliminary approval of the settlement with Apple, Google, Intel, and Adobe is 2014 WL 3917126 (N.D. Cal. Aug. 8, 2014). The order granting final approval of the plaintiffs' settlement with Apple, Google, Intel, and Adobe is 2015 WL 5159441 (N.D. Cal. Sept. 2, 2015).

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7. *United States v. Orellana*, No. 09-CR-00096 LHK (N.D. Cal.), and *Orellana v. United States*, No. 13-CV-00698 LHK (N.D. Cal.), 2015 WL 4694038 (N.D. Cal. Aug. 6, 2015)

In 2012, I ruled on pretrial motions and presided over a five-day criminal bench trial involving one count of possession with intent to distribute cocaine and one count of conspiracy. I found the defendant guilty of both counts and sentenced him. In 2014, the Ninth Circuit affirmed the conviction and sentence. The defendant thereafter filed a petition for writ of habeas corpus. In 2015, I denied with prejudice the defendant's habeas corpus petition, but reduced the defendant's sentence pursuant to the parties' stipulation based on a change in the U.S. Sentencing Guidelines.

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Pro se (in habeas proceeding)

8. *State Farm Life Ins. Co. v. Cai*, No. 09-CV-00396-LHK (N.D. Cal.)

This was an interpleader action to resolve competing claims to a life insurance policy stemming from Mr. Cai's allegedly felonious and intentional killing of the insured, his wife, Ms. Deng. In 2010, I denied State Farm's motion for judgment in interpleader and granted a motion to dismiss cross-claims. In 2011, I denied Mr. Cai's motion to dismiss a cross-claim brought by Ms. Deng's estate. In 2013, I granted State Farm's renewed motion for judgment in interpleader and ruled on State Farm's motion for attorneys' fees. In 2014, I ruled on pretrial motions and presided over a six-day jury trial on cross-claims brought against Mr. Cai by Ms. Deng's estate. Mr. Cai represented himself until he retained counsel prior to trial. The jury found that Mr. Cai feloniously and intentionally killed Ms. Deng, and thus the life insurance proceeds were awarded to Ms. Deng's estate.

The order denying judgment in interpleader and granting the motion to dismiss cross-claims is 2010 WL 4628228 (N.D. Cal. Nov. 4, 2010). The order denying the second motion to dismiss cross-claims is 2011 WL 864938 (N.D. Cal. Mar. 11, 2011). The order entering judgment in interpleader for State Farm is 2013 WL 4782383 (N.D. Cal. Sept. 6, 2013).

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9. *Lift-U v. Ricon Corp.*, No. 10-CV-1850 LHK (N.D. Cal.); *Lift-U v. N. Am. Bus Indus., Inc.*, No. 12-CV-1129 LHK (N.D. Cal.); and *Lift-U v. N. Am. Bus Indus., Inc.*, No. 12-CV-3603 LHK (N.D. Cal.)

These were three patent infringement actions. In 2011, I construed the patent claims, granted summary judgment of invalidity, and denied summary judgment

of non-infringement. In 2012, I granted in part and denied in part the parties' cross-motions for partial summary judgment, which addressed validity, infringement, willfulness, and lost profits for four patents. At the parties' request, I presided over the settlement conference that settled all three cases in 2012.

The orders on summary judgment are 2011 WL 5118634 (N.D. Cal. Oct. 28, 2011) (order granting summary judgment of invalidity and denying summary judgment of non-infringement), and 2012 WL 5303301 (N.D. Cal. Oct. 25, 2012) (order granting-in-part and denying-in-part the cross-motions for partial summary judgment).

Plaintiff's Counsel:
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Defendants' Counsel:
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10. *Columbia Cas. Ins. Co. v. Gordon Trucking*, No. 09-CV-05441 LHK (N.D. Cal.)

This was a civil action between two co-insurers over responsibility for paying for defense costs and the settlement of an underlying state court personal injury case. In 2010, I granted a motion to dismiss and granted in part and denied in part a motion for partial summary judgment. In 2011, I denied motions in limine and presided over a four-day bench trial. After trial, I found that the plaintiff was obligated to pay its $5 million policy limits. The parties reached a settlement and filed a stipulation of dismissal prior to filing any post-trial motions.

The order granting the motion to dismiss is 2010 WL 4591977 (N.D. Cal. Nov. 4, 2010). The order granting-in-part and denying-in-part the motion for partial summary judgment is 758 F. Supp. 2d 909 (N.D. Cal. 2010). My findings of fact and conclusions of law are 2011 WL 4434722 (N.D. Cal. Sept. 23, 2011).

Plaintiff's Counsel:
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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. *Brown v. Google LLC*, No. 20-CV-03664-LHK, — F. Supp. 3d —, 2021 WL 949372 (N.D. Cal. Mar. 12, 2021)

Plaintiffs' Counsel:
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Defendant's Counsel:
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2. *In re Zoom Video Commc'ns Inc. Priv. Litig.*, No. 20-CV-02155-LHK, — F. Supp. 3d —, 2021 WL 930623 (N.D. Cal. Mar. 11, 2021)

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Defendants' Counsel:
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3. *Oceana, Inc. v. Ross*, 483 F. Supp. 3d 764 (N.D. Cal. 2020)

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4. *Sharks Sports & Entm't, LLC v. Fed. Transit Admin.*, No. 18-CV-04060-LHK, 2020 WL 4569467 (N.D. Cal. Aug. 8, 2020)

Plaintiff's Counsel:
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5. *Wise v. MAXIMUS Fed. Servs.*, 478 F. Supp. 3d 873 (N.D. Cal. 2020)

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6. *Shearwater v. Ashe*, No. 14-CV-02830-LHK, 2015 WL 4747881 (N.D. Cal. Aug. 11, 2015)

Plaintiffs' Counsel:

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7. *In re Animation Workers Antitrust Litig.*, 87 F. Supp. 3d 1195 (N.D. Cal. 2015)

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8. *In re Adobe Sys., Inc. Privacy Litig.*, 66 F. Supp. 3d 1197 (N.D. Cal. 2014)

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Defendant's Counsel:
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9. *Police Ret. Sys. of St. Louis v. Intuitive Surgical*, No. 10-CV-03451-LHK, 2012 WL 1868874 (N.D. Cal. May 22, 2012), *aff'd*, 759 F.3d 1051 (9th Cir. 2014)

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10. *Karl v. City of Mountlake Terrace*, 678 F.3d 1062 (9th Cir. 2012)

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

Certiorari was granted in the following case:

Apple, Inc. v. Samsung Elecs. Co., 926 F. Supp. 2d 1100 (N.D. Cal.

2013), *vacated and remanded*, 786 F.3d 983 (Fed. Cir. 2015), *rev'd and remanded*, 137 S. Ct. 429 (2016)

Certiorari was requested, but denied or dismissed, in the following cases:

Aguirre v. Woodford, No. C 09-1256 LHK (PR), 2011 WL 3471018 (N.D. Cal. Aug. 8, 2011), *certificate of appealability denied*, No. 11-17231 (9th Cir. Nov. 9, 2012), *cert. denied*, No. 12-9392 (U.S. May 28, 2013)

Ali v. Figueroa, No. C 12-2499 LHK (PR), 2013 WL 2016670 (N.D. Cal. May 13, 2013), *certificate of appealability denied*, No. 13-16185 (9th Cir. Apr. 4, 2014), *cert. denied*, 135 S. Ct. 756 (2014)

Bonty v. Ramsey, No. C 10-5360 LHK (PR), 2011 WL 6330656 (N.D. Cal. Dec. 19, 2011), *aff'd*, 519 F. App'x 501 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 1880 (2014)

Brown v. Mental Health Rehab., No. 18-CV-06069 LHK (PR), 2018 WL 11282214 (N.D. Cal. Dec. 4, 2018), *appeal dismissed*, 2019 WL 11769334 (9th Cir. June 12, 2019), *cert. denied*, 140 S. Ct. 1145 (2020)

Carrick v. Rice, No. 18-CV-00454-LHK, 2018 WL 11025037 (N.D. Cal. June 28, 2018), *aff'd*, 749 F. App'x 615 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 437 (2019)

Dang v. Samsung Elecs. Co., No. 14-CV-00530-LHK, 2015 WL 4735520 (N.D. Cal. Aug. 10, 2015), *rev'd and remanded*, 673 F. App'x 779 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 203 (2017)

Facebook, Inc. v. Power Ventures, Inc., No. C 08-05780-JW, 844 F. Supp. 2d 1025 (N.D. Cal. 2012), and No. 08-CV-5780-LHK, 2013 WL 5372341 (N.D. Cal. Sept. 25, 2013), *aff'd in part, vacated in part, rev'd in part*, 828 F.3d 1068 (9th Cir. 2016), and *aff'd in part, vacated in part, rev'd in part*, 844 F.3d 1058 (9th Cir. 2016), *cert. denied*, 138 S. Ct. 313 (2017)

Fox v. HCA Holdings, Inc., No. 15-CV-02073-LHK, 2015 WL 6744565 (N.D. Cal. Nov. 4, 2015), *aff'd*, 675 F. App'x 648 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 327 (2017)

Furnace v. Giurbino, No. 12-CV-0873 LHK (PR), 2013 WL 6157954 (N.D. Cal. Nov. 22, 2013), *aff'd*, 838 F.3d 1019 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 2195 (2017)

Ilaw v. Daughters of Charity Health Sys., No. 11-CV-02752-LHK, 2012 WL 381240 (N.D. Cal. Feb. 6, 2012), *aff'd*, 585 F. App'x 572 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 1412 (2015)

In re Wade, No. 14-CV-03453-LHK, No. 5 (N.D. Cal. Oct. 9, 2014), *aff'd*, 671 F. App'x 669 (9th Cir. 2016), *cert. denied sub nom. Wade v. Stevens*, 137 S. Ct. 2188 (2017)

Jonna Corp. v. City of Sunnyvale, No. 17-CV-00956-LHK, 2017 WL 5194513 (N.D. Cal. Nov. 9, 2017), *aff'd*, 754 F. App'x 592 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 224 (2019)

Johnson v. Hedgpeth, No. C 11-0495 LHK (PR), 2011 WL 4948668 (N.D. Cal. Oct. 18, 2011), *certificate of appealability denied*, No. 11-17756 (9th Cir. Dec. 22, 2011), *cert. dismissed*, 566 U.S. 972 (2012)

Kimner v. Web Watchers, No. 19-CV-06973-LHK, No. 19 (N.D. Cal. Feb. 6, 2020), *aff'd*, 2020 WL 8970673 (9th Cir. 2020), *cert. denied*, No. 20-1342 (U.S. May 24, 2021)

Loan Payment Admin. LLC v. Hubanks, No. 14-CV-04420-LHK, 2015 WL 3776939 (N.D. Cal. June 17, 2015), *rev'd sub nom. Nationwide Biweekly Admin., Inc. v. Owen*, 873 F.3d 716 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 1698 (2018)

Martinez v. Am.'s Wholesale Lender, No. 18-CV-02869-LHK, 2019 WL 2451010 (N.D. Cal. June 12, 2019), *aff'd*, 808 F. App'x 519 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 958 (2020)

Morrison v. Peterson, No. C 11-1896 LHK (PR), 2013 WL 942723 (N.D. Cal. Mar. 11, 2013), *aff'd*, 809 F.3d 1059 (9th Cir. 2015), *cert. denied* 136 S. Ct. 2021 (2016)

Northstar Fin. Advisors Inc. v. Schwab Invs., 807 F. Supp. 2d 871 (N.D. Cal. 2011), *rev'd in part, vacated in part, and remanded*, 779 F.3d 1036 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 240 (2015)

Pierce v. Sherman, No. 15-CV-05568 LHK (PR), 2017 WL 600099 (N.D. Cal. Feb. 13, 2017), *aff'd*, 749 F. App'x 655 (9th Cir. 2019), *cert. denied*, 139 S. Ct. 2760 (2019)

Potts v. McDonald, No. C 09-5849 LHK (PR), 2011 WL 6025869 (N.D. Cal. Dec. 5, 2011), *certificate of appealability denied sub nom. Potts v. Walker*, No. 11-17987 (9th Cir. June 22, 2012), *cert. denied*, 568 U.S. 1102 (2013)

Qin v. Brown, No. 19-CV-00311-LHK, 2019 WL 3368896 (N.D. Cal. May 29, 2019), *aff'd sub nom. Qin v. Kong-Brown*, 801 F. App'x 581 (9th Cir. 2020), *cert. denied sub nom. Li Qin v. Kong-Brown*, 141 S. Ct. 391 (2020), *reh'g denied*, 141 S. Ct. 970 (2020)

Shaw v. Hedgpeth, No. C 10-5800 LHK (PR), 2012 WL 2906243 (N.D. Cal. July

16, 2012), *certificate of appealability denied*, No. 12-16761 (9th Cir. June 18, 2013), *cert. denied*, 571 U.S. 1137 (2014)

Smith v. City of Santa Clara, No. 11-CV-03999-LHK, 2013 WL 164191 (N.D. Cal. Jan. 15, 2013), *aff'd*, 876 F.3d 987 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 1563 (2018)

Sowinski v. Cal. Air Res. Bd., No. 18-CV-03979-LHK, 2018 WL 9841114 (N.D. Cal. Sept. 25, 2018), *aff'd*, 971 F.3d 1371 (Fed. Cir. 2020), *cert. dismissed*, No. 20-133 (U.S. June 10, 2021)

Steshenko v. Albee, No. 13-CV-04948-LHK, 2015 WL 4090430 (N.D. Cal. July 6, 2015), and *Steshenko v. Gayrard*, No. 13-CV-03400-LHK, 2015 WL 4090033 (N.D. Cal. July 6, 2015), *aff'd*, 691 F. App'x 869 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 2605 (2018)

TS Patents LLC v. Yahoo! Inc., 279 F. Supp. 3d 968 (N.D. Cal. 2017), *aff'd*, 731 F. App'x 978 (Fed. Cir. 2018), *cert. denied*, 139 S. Ct. 1569 (2019)

United States v. Colby, No. 17-CR-00168-LHK, 2018 WL 2688882 (N.D. Cal. June 5, 2018), *aff'd*, 837 F. App'x 587 (9th Cir. 2021), *cert. denied*, No. 20-8168, 2021 WL 2637964 (U.S. June 28, 2021)

Van v. Language Line, LLC, No. 14-CV-03791-LHK, 2016 WL 5339805 (N.D. Cal. Sept. 23, 2016), *aff'd sub nom. Van v. Language Line Servs., Inc.*, 733 F. App'x 349 (9th Cir. 2018), *cert. denied sub nom. Van v. Language Line LLC*, 139 S. Ct. 263 (2018)

Von Haar v. City of Mtn. View, No. 10-CV-02995-LHK, 2012 WL 5828511 (N.D. Cal. Nov. 15, 2012), *appeal dismissed*, 584 F. App'x 297 (9th Cir. 2014), *cert. denied sub nom. Look v. City of Mtn. View*, 135 S. Ct. 2316 (2015)

Wilkins v. Cty. of Alameda, No. C 10-3090 LHK (PR), 2012 WL 2568219 (N.D. Cal. July 2, 2012), *aff'd in part, rev'd in part, and remanded*, 571 F. App'x 621 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 266 (2014)

Yi Tai Shao v. McManis Faulkner, LLP, No. 14-CV-01137-LHK, 2014 WL 4773981 (N.D. Cal. Sept. 22, 2014), *aff'd*, 670 F. App'x 575 (9th Cir. 2016), *cert. denied sub nom. Shao v. McManis Faulkner, LLP*, 138 S. Ct. 382 (2017), *reh'g denied*, 138 S. Ct. 727 (2018)

United States v. Martinez, No. 17-CR-00257-LHK-1, 2018 WL 3861831 (N.D. Cal. Aug. 14, 2018), *vacated and remanded*, 811 F. App'x 396 (9th Cir. 2020), *cert. denied*, No. 20-7038 (U.S. Apr. 19, 2021)

A petition for certiorari is pending in the following cases:

Hotop v. City of San Jose, No. 18-CV-02024-LHK, 2018 WL 4850405 (N.D. Cal. Oct. 4, 2018), *aff'd*, 982 F.3d 710 (9th Cir. 2020), *pet. for cert. filed*, No. 20-1755 (U.S. June 16, 2021)

VoIP-Pal.com, Inc. v. Apple Inc., No. 18-CV-06216-LHK, 411 F. Supp. 3d 926 (N.D. Cal. 2019), *aff'd*, 828 F. App'x 717 (Fed. Cir. 2020), *pet. for cert. filed*, No. 20-1809 (U.S. June 25, 2021)

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.

Apple, Inc. v. Samsung Elecs. Co. Ltd., 2011 WL 7036077 (N.D. Cal. Dec. 2, 2011), *aff'd in part, vacated in part, and remanded*, 678 F.3d 1314 (Fed. Cir. 2012). In this opinion, I denied Apple's request for a preliminary injunction on four patents. In a 2-1 decision, the Federal Circuit affirmed my findings as to two patents. However, the Federal Circuit held that I erred in concluding that Apple had failed to show a likelihood of success on the merits as to the other two patents. The Federal Circuit nevertheless affirmed my denial of a preliminary injunction as to one of those two patents because Apple had not sufficiently demonstrated irreparable harm. The Federal Circuit vacated my denial of a preliminary injunction as to the remaining patent and remanded the case for further proceedings.

Apple, Inc. v. Samsung Elecs. Co., Ltd., 909 F. Supp. 2d 1147 (N.D. Cal. 2012), *aff'd in part, vacated in part, and remanded*, 735 F.3d 1352 (Fed. Cir. 2013). I denied Apple's request for a permanent injunction on 26 of Samsung's products that had been found by a jury to have infringed Apple's design and utility patents and to have diluted Apple's trade dresses. The Federal Circuit affirmed my findings as to Apple's design patent and trade dress claims. However, the Federal Circuit determined that I applied the incorrect legal standard to analyze the factors of irreparable harm and the inadequacy of damages as to Apple's utility patent claims. Accordingly, the Federal Circuit vacated and remanded my denial of a permanent injunction as to Apple's utility patents.

Apple, Inc. v. Samsung Elecs. Co., Ltd., 786 F.3d 983 (Fed. Cir. 2015), *rev'd and remanded, Samsung Elecs. Co. v. Apple Inc.*, 137 S. Ct. 429 (2016), *remanding to trial court*, 678 F. App'x 1012 (Fed. Cir. 2017), affirmed my order at 2012 WL 3071477 (N.D. Cal. July 27, 2012); affirmed in part, reversed in part, and remanded my order at 920 F. Supp. 2d 1079 (N.D. Cal. 2013); and vacated and remanded my order at 926 F. Supp. 2d 1100 (N.D. Cal. 2013). Specifically, the Federal Circuit affirmed my claim construction order, 2012 WL 3071477. As to my 920 F. Supp. 2d 1079 and 926 F. Supp. 2d 1100 orders, the Federal Circuit

affirmed the validity and infringement judgments and jury verdicts as to Apple's design and utility patents as well as the associated damages awarded for that infringement. However, the Federal Circuit reversed the judgments and jury verdicts that Apple's trade dresses were protectable and thus vacated the damages award for Samsung's products found to have diluted Apple's trade dresses. In December 2016, the U.S. Supreme Court reversed the Federal Circuit's method of calculating design patent damages and remanded. In February 2017, the Federal Circuit remanded the case to determine if Samsung had waived the design patent damages issue, and if not, to determine the proper method of calculating design patent damages and whether a new trial was necessary. In July 2017, I found that Samsung had not waived the design patent damages issue. In October 2017, I held that a new trial with the correct method of calculating design patent damages was necessary. After ruling on summary judgment, motions to exclude expert reports and testimony, and motions in limine, I presided over a jury trial in May 2018. The jury awarded design patent damages totaling over $538 million. The parties settled and stipulated to dismissal in June 2018 before I ruled on post-trial motions.

Apple, Inc. v. Samsung Elecs. Co., Ltd., 2012 WL 3283478 (N.D. Cal. Aug. 9, 2012), and 2012 WL 5988570 (N.D. Cal. Nov. 29, 2012), *rev'd and remanded*, 727 F.3d 1214 (Fed. Cir. 2013). In the August 2012 order, I granted in part and denied in part requests to seal various exhibits attached to Apple's and Samsung's pre-trial motions. In the November 2012 order, I granted in part and denied in part requests to seal various exhibits attached to Apple's post-trial motions. Of the documents that I ordered to be unsealed, Apple and Samsung appealed a small subset to the Federal Circuit (26 documents total). The Federal Circuit consolidated the appeals. The Federal Circuit determined that the documents challenged on appeal should have been sealed, and accordingly reversed my decisions and remanded.

Apple, Inc. v. Samsung Elecs. Co., Ltd., 877 F. Supp. 2d 838 (N.D. Cal. 2012), *rev'd and remanded*, 695 F.3d 1370 (Fed. Cir. 2012). I granted Apple's request for a preliminary injunction on one of Samsung's products that allegedly infringed upon four of Apple's utility patents. The Federal Circuit reversed my decision and held that I erred in finding a sufficient causal nexus between Samsung's alleged infringement and the irreparable harm to Apple.

Apple, Inc. v. Samsung Elecs. Co., Ltd., 2014 WL 7496140 (N.D. Cal. Aug. 27, 2014), *vacated and remanded*, 809 F.3d 633 (Fed. Cir. 2015). I denied Apple's request for a permanent injunction on nine of Samsung's products which had been found by a jury to have infringed upon three of Apple's utility patents. In a 2-1 decision, the Federal Circuit concluded, contrary to my findings, that the factors of irreparable harm and inadequacy of legal remedies favored entry of a permanent injunction. Chief Judge Sharon Prost dissented from the majority's decision.

Apple, Inc. v. Samsung Elecs. Co., No. 12-CV-00630-LHK, 2014 WL 4467837 (N.D. Cal. Sept. 9, 2014), *rev'd*, 816 F.3d 788 (Fed. Cir. 2016), *vacated in part on reh'g en banc*, 839 F.3d 1034 (Fed. Cir. 2016), *and aff'd*, 839 F.3d 1034 (Fed. Cir. 2016) (en banc). At trial, Apple asserted five patents against Samsung (the '647, '959, '414, '721, and '172 patents). Samsung asserted two patents against Apple (the '239 and '449 patents). Following a jury trial, I upheld the jury's verdicts that (1) none of the five Apple patents were invalid; (2) Samsung infringed the '647 and '721 patents; and (3) Apple did not infringe Samsung's '239 patent. I also made other rulings regarding willful infringement and Samsung's parent company's liability for indirect infringement; the Federal Circuit did not reach either issue on appeal. On appeal, the Federal Circuit concluded that Apple's '721 and '172 patents were invalid and that Apple's '647 patent was not infringed, and so reversed the judgments and jury verdicts as to those three Apple patents. The Federal Circuit affirmed the judgments and jury verdicts as to Apple's '959 and '414 patents as well as to Samsung's '239 patent. The Federal Circuit also affirmed other jury findings and my other post-trial rulings that were set forth in *Apple, Inc. v. Samsung Elecs. Co., Ltd.*, 67 F. Supp. 3d 1100 (N.D. Cal. 2014). However, in October 2016, the Federal Circuit en banc reversed the Federal Circuit panel, upheld the judgment and verdicts for the three reversed Apple patents, and remanded the issue of willful infringement in light of an intervening U.S. Supreme Court case. Thus, ultimately, the judgments withstood en banc appellate review.

Broussard v. Charvat, No. 13-CV-04878, No. 6 (N.D. Cal. Dec. 6, 2013) (copy supplied), *remanded*, No. 13-17680 (9th Cir. Aug. 25, 2014) (copy supplied). I denied the plaintiff's motion for reconsideration because the plaintiff had filed a notice of appeal with the Ninth Circuit. In general, filing a notice of appeal would divest the district court of jurisdiction. The Ninth Circuit, however, issued a limited remand to consider whether the plaintiff's motion for reconsideration could be construed as a motion seeking relief under Federal Rule of Appellate Procedure 4(a)(4), even though the plaintiff's motion did not expressly refer to Rule 4(a)(4). Motions seeking relief under Rule 4(a)(4) are exempt from the general rule regarding divestment of jurisdiction.

Brazil v. Dole Packaged Foods, LLC, No. 12-CV-01831-LHK, 2014 WL 6901867 (N.D. Cal. Dec. 8, 2014), *aff'd in part, rev'd in part*, 660 F. App'x 531 (9th Cir. 2016). The plaintiff brought a putative class action on behalf of consumers allegedly misled by Dole Packaged Foods ("Dole") describing its fruit products as "All Natural Fruit." I granted (1) summary judgment to Dole on certain state law labeling claims; (2) dismissed the plaintiff's claims for the sale of "illegal products"; and (3) granted in part and denied in part class certification. On appeal, the Ninth Circuit reversed the grant of summary judgment for Dole on the ground that a reasonable consumer could conclude that synthetic citric acid is not "all natural." However, the Ninth Circuit affirmed the dismissal of the "illegal products" claim and my class certification decisions.

Brown v. Flores, No. 18-CV-01578-LHK, 2018 WL 9838492 (N.D. Cal. Aug. 20, 2018), *rev'd and remanded*, 755 F. App'x 691 (9th Cir. 2019). The plaintiff, a California state prisoner proceeding *pro se*, alleged that correctional officers failed to fix flooding in his cell. I dismissed the plaintiff's complaint on the basis that his allegations were too conclusory. The Ninth Circuit disagreed, and held that the plaintiff's allegations, liberally construed, were sufficient to warrant ordering the defendants to file an answer. On remand, the parties agreed to dismiss the plaintiff's case with prejudice.

Bruton v. Gerber Prods. Co., 961 F. Supp. 2d 1062 (N.D. Cal. 2013), *aff'd in part, rev'd in part, and remanded*, 703 F. App'x 468 (9th Cir. 2017). The plaintiff filed a putative class action against Gerber Products Company for alleged mislabeling of baby foods. I dismissed several of the plaintiff's claims, denied class certification, denied the plaintiff's motion for partial summary judgment, and granted summary judgment to Gerber. Citing cases that were decided after my rulings, the Ninth Circuit reversed the dismissal of the plaintiff's unjust enrichment claim and denial of class certification. The Ninth Circuit also reversed the grant of summary judgment for Gerber on the plaintiff's claim that Gerber's labels were unlawful under California's Unfair Competition Law. However, the Ninth Circuit affirmed the grant of summary judgment to Gerber on the plaintiff's claims that Gerber's labels were deceptive.

Ciganek v. Portfolio Recovery Assocs., LLC, 190 F. Supp. 3d 908 (N.D. Cal. 2016), *appeal remanded*, No. 16-16120, 2019 WL 2895045 (9th Cir. June 25, 2019). In 2016, I granted summary judgment for the defendant and held that the defendant's use of declarations in lieu of personal testimony at trial did not violate the Fair Debt Collection Practices Act. On appeal, the Ninth Circuit remanded for further proceedings consistent with a decision issued in 2019, *Meza v. Portfolio Recovery Assocs., LLC*, 6 Cal. 5th 844 (Ct. App. 2019). On remand, the parties agreed to dismiss the case with prejudice.

City of San Jose v. Trump, 497 F. Supp. 3d 680 (N.D. Cal.) (*per curiam*), *vacated and remanded*, 141 S. Ct. 1231 (2020) (*per curiam*). A group of cities, non-profit organizations, individuals, and the State of California challenged the legality of a presidential memorandum, *Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679 (July 23, 2020). I served on the three-judge court that was convened to hear the lawsuit. U.S. Circuit Judge Richard R. Clifton, U.S. District Court Judge Edward M. Chen, and I held *per curiam* that the presidential memorandum violated the U.S. Constitution, the Census Act of 1954, and the Reapportionment Act of 1929. The federal government directly appealed the decision to the U.S. Supreme Court under the appeal statute for three-judge courts, 28 U.S.C. § 1253. The Supreme Court held that the lawsuit was premature. Thus, the Supreme Court dismissed the case for lack of jurisdiction without expressing a view on the merits. Justice Breyer, joined by Justices Sotomayor and Kagan, dissented. They would have affirmed the three-judge court's judgment.

Dang v. Samsung Elecs. Co., No. 14-CV-00530-LHK, 2015 WL 4735520 (N.D. Cal. Aug. 10, 2015), *rev'd and remanded*, 673 F. App'x 779 (9th Cir. 2017). I granted Samsung's motion to compel arbitration. The Ninth Circuit reversed, reasoning that the plaintiff and Samsung had not formed an agreement to arbitrate under California law. On remand, I dismissed the plaintiff's complaint. In *Dang v. Samsung Elecs. Co., Ltd.*, 803 F. App'x 137 (9th Cir. 2020), the Ninth Circuit affirmed my decision.

Facebook, Inc. v. Power Ventures, Inc., 844 F. Supp. 2d 1025 (N.D. Cal. 2012), and No. 08-CV-5780-LHK, 2013 WL 5372341 (N.D. Cal. Sept. 25, 2013), *aff'd in part, vacated in part, and rev'd in part*, 828 F.3d 1068 (9th Cir. 2016), and *aff'd in part, vacated in part, and rev'd in part*, 844 F.3d 1058 (9th Cir. 2016), *cert. denied*, 138 S. Ct. 313 (2017), *on remand*, 252 F. Supp. 3d 765 (N.D. Cal. 2017). The plaintiff alleged that the defendants accessed the plaintiff's user data and sent users form emails and other messages without the plaintiff's permission. United States District Judge James Ware granted summary judgment in favor of the plaintiff on the plaintiff's claims that Power Ventures, Inc. violated the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN–SPAM"), the Computer Fraud and Abuse Act of 1986 ("CFAA"), and California Penal Code Section 502. After Judge Ware retired from the bench, the case was reassigned to me. The defendants filed a motion for leave to file a motion for reconsideration of Judge Ware's summary judgment order. In light of Judge Ware's order granting summary judgment, the plaintiff moved for statutory and compensatory damages, permanent injunctive relief, and summary judgment on the personal liability of the individual defendant, Mr. Vachani, for Power Ventures' violations. I denied the defendants' motion for leave to file a motion for reconsideration and granted the plaintiff's motion for statutory and compensatory damages, motion for permanent injunctive relief, and motion for summary judgment on Mr. Vachani's personal liability. The defendants appealed. The Ninth Circuit reversed Judge Ware's finding that the defendants violated the CAN–SPAM Act; affirmed in part Judge Ware's finding that the defendants violated the CFAA; affirmed in part Judge Ware's finding that the defendants violated Section 502; and affirmed my finding that Mr. Vachani was personally liable for Power Ventures' violations. In light of these holdings, the Ninth Circuit vacated the injunction and award of damages and remanded the case to reconsider what remedies and damages were appropriate under the CFAA and Section 502. On remand, I found that the plaintiff was entitled to compensatory damages and permanent injunctive relief. In *Facebook, Inc. v. Power Ventures, Inc.*, 749 F. App'x 557 (9th Cir. 2019), the Ninth Circuit affirmed my decision.

Fed. Trade Comm'n v. Qualcomm Inc., 411 F. Supp. 3d 658 (N.D. Cal. 2019), *rev'd and vacated*, 969 F.3d 974 (9th Cir. 2020). After a bench trial, I granted the Federal Trade Commission's ("FTC") request for a permanent injunction against Qualcomm's allegedly anticompetitive conduct. The FTC argued that Qualcomm unlawfully monopolized and restrained trade in the cellular modem chips market.

On appeal, the Ninth Circuit held that Qualcomm's conduct was merely "hypercompetitive." Specifically, the Ninth Circuit concluded that Qualcomm (1) had no antitrust duty to license rival chip suppliers; (2) did not impose an anticompetitive surcharge through its "no license, no chips" policy; and (3) did not substantially foreclose competition in the cellular modem chips market.

Heineke v. Santa Clara Univ., No. 17-CV-05285-LHK, 2017 WL 4098887 (N.D. Cal. Sept. 15, 2017), *rev'd and remanded*, 736 F. App'x 622 (9th Cir. 2018), *on remand*, 2018 WL 3368455 (N.D. Cal. July 10, 2018), *aff'd*, 965 F.3d 1009 (9th Cir. 2020), and *aff'd in part, rev'd in part, and remanded*, 812 F. App'x 644 (9th Cir. 2020). On September 13, 2017, the plaintiff—a professor suspended by Santa Clara University—filed an emergency motion for a temporary restraining order or preliminary injunction. Two days later, I denied the plaintiff's motion because he had failed to show a substantial likelihood of irreparable harm. The Ninth Circuit reversed and remanded on the ground that I should have also analyzed the other preliminary injunction factors. On July 10, 2018, I denied the plaintiff's three motions for a preliminary injunction and granted the defendant's motion to dismiss. On a second appeal, the Ninth Circuit held that the plaintiff was entitled to amend his complaint to add a claim under the Age Discrimination in Employment Act. However, the Ninth Circuit otherwise affirmed my (1) denial of a preliminary injunction; (2) dismissal of the plaintiff's constitutional claims; and (3) declination of supplemental jurisdiction.

Jaras v. Experian Info. Sols., Inc., No. 16-CV-03336-LHK, 2016 WL 7337540 (N.D. Cal. Dec. 19, 2016), *aff'd in part, vacated in part, and remanded sub nom. Jaras v. Equifax Inc.*, 766 F. App'x 492 (9th Cir. 2019). The plaintiff filed a complaint alleging that Equifax and Experian failed to perform a "reasonable reinvestigation" under the Fair Credit Reporting Act. I granted Equifax's motion for judgment on the pleadings with prejudice after finding that the plaintiff failed to establish that an actual inaccuracy existed on his credit report, and therefore the plaintiff's claim was barred by law. The Ninth Circuit consolidated an appeal from my decision with two other cases and held that the plaintiff's claim should have been dismissed without prejudice for failure to establish Article III standing. The Ninth Circuit therefore affirmed in part, vacated in part, and remanded with instructions to enter dismissals without prejudice. Judge Berzon filed a dissent.

Kalani v. Starbucks Corp., 117 F. Supp. 3d 1078 (N.D. Cal. 2015), and No. 13-CV-00734-LHK, 2016 WL 379623 (N.D. Cal. Feb. 1, 2016), *aff'd in part, vacated in part, and remanded sub nom. Kalani v. Starbucks Coffee Co.*, 698 F. App'x 883 (9th Cir. 2017). After a bench trial, I entered judgment in favor of the plaintiff, who had alleged violations of Title III of the Americans with Disabilities Act ("ADA") and the California Unruh Civil Rights Act. I also granted injunctive relief that required the defendant to provide a wheelchair accessible table with a view of the store, rather than a wall. I subsequently granted in part and denied in part the plaintiff's motion for attorneys' fees and costs. The defendant appealed both decisions. During the pendency of the appeal, the plaintiff passed away.

The Ninth Circuit held that the plaintiff's ADA claims were therefore moot because the only remedy available under Title III is injunctive relief and there was no prospect of future harm. The Ninth Circuit affirmed my decision with respect to the Unruh Civil Rights Act claim. The Ninth Circuit remanded the case with instructions to dissolve the injunction and to redetermine the award of attorneys' fees and costs if necessary.

Kane v. Chobani, Inc., 973 F. Supp. 2d 1120 (N.D. Cal. 2014), *vacated sub nom. Kane v. Chobani, LLC*, 645 F. App'x 593 (9th Cir. 2016). The plaintiffs brought a putative class action challenging Chobani's labeling of yogurt. I dismissed the plaintiffs' third amended complaint for failing to show actual reliance on allegedly misleading labels. On appeal, the Ninth Circuit vacated the dismissal and remanded with instructions to stay the case. The Ninth Circuit reasoned that the case should await Food and Drug Administration ("FDA") rulemaking on the labeling at issue. The case remains stayed pending the FDA rulemaking.

Khouanmany v. Carvajal, No. 20-CV-02858-LHK, No. 21 (Aug. 21, 2020) (copy supplied), *rev'd and remanded*, 2021 U.S. App. LEXIS 14973 (9th Cir. May 19, 2021). The plaintiff, a *pro se* federal prisoner, petitioned for a writ of habeas corpus. I dismissed the plaintiff's petition because she failed to file a timely application to proceed in forma pauperis ("IFP"). I also determined that I lacked jurisdiction to consider the plaintiff's motion for reconsideration on her IFP application. On appeal, the Ninth Circuit held that, in fact, I had jurisdiction to hear the plaintiff's motion for reconsideration. On remand, I reopened the plaintiff's case and dismissed her petition on the merits with leave to amend. The plaintiff then dismissed her Ninth Circuit appeal and her petition.

Loan Payment Admin. LLC v. Hubanks, No. 14-CV-04420-LHK, 2015 WL 3776939, and *Nationwide Biweekly Admin., Inc. v. Owen*, No. 14-CV-05166-LHK, 2015 WL 3792866 (N.D. Cal. June 17, 2015), *aff'd in part, rev'd in part, vacated in part, and remanded*, 873 F.3d 716 (9th Cir. 2017). In two cases, Nationwide Biweekly and its subsidiary Loan Payment (together, "Nationwide") sought a preliminary injunction against several California laws meant to protect against consumer confusion. Specifically, Nationwide argued that the laws violated the First Amendment and the Dormant Commerce Clause of the U.S. Constitution. I denied the motions for preliminary injunction. Then, after California law enforcement sued Nationwide, I dismissed the cases under the *Younger* abstention doctrine. On appeal, the Ninth Circuit (1) reversed my *Younger* dismissal; (2) vacated my denial of the preliminary injunction as to the Dormant Commerce Clause; (3) affirmed my denial of the preliminary injunction as to the First Amendment; and (4) remanded for further proceedings. U.S. District Judge Ann D. Montgomery, sitting by designation, dissented. She would have affirmed my judgment. On remand, Nationwide Biweekly's case settled (No. 14-CV-05166), and I dismissed Loan Payment's complaint. My dismissal was affirmed by the Ninth Circuit. *Loan Payment Admin. LLC v. Hubanks*, No.

14-CV-04420-LHK, 2018 WL 6438364 (N.D. Cal. Dec. 7, 2018), *aff'd*, 821 F. App'x 687 (9th Cir. 2020).

Magadia v. Wal-Mart Assocs., Inc., 384 F. Supp. 3d 1058 (N.D. Cal. 2019), *rev'd in part, vacated in part*, No. 19-16184, 2021 WL 2176584 (9th Cir. May 28, 2021). After a bench trial, I awarded Private Attorneys General Act ("PAGA") penalties against Wal-Mart for meal-break violations. I also awarded statutory damages and PAGA penalties for one wage statement claim and PAGA penalties for a second wage statement claim. The Ninth Circuit held that the plaintiff lacked standing to bring a PAGA claim for meal-break violations on behalf of aggrieved employees where the plaintiff himself had not suffered an injury. Based on this holding, the Ninth Circuit remanded the plaintiff's meal-break claim to the district court with instructions to remand to state court. As to the plaintiff's wage statement claims, the Ninth Circuit upheld my finding that the plaintiff and other class members had standing to bring two claims under California's wage statement statute. However, the Ninth Circuit reversed my finding that Wal-Mart violated two California wage statement statutes. On July 12, 2021, the plaintiff petitioned for panel rehearing and rehearing en banc. On July 19, 2021, the Ninth Circuit panel ordered Wal-Mart to file a response to the petition within 21 days. On July 27, 2021, the Ninth Circuit panel granted Wal-Mart a 14-day extension to file a response. The case remains pending before the Ninth Circuit.

Meza v. Portfolio Recovery Assocs., LLC, 125 F. Supp. 3d 994 (N.D. Cal. 2015), *vacated and remanded*, 762 F. App'x 431 (9th Cir. 2019). On summary judgment, I concluded that Section 98 of the California Civil Procedure Code permits a declarant to provide an address within 150 miles of the place of trial where the declarant is available for service of process but where the declarant is not physically present for personal service. Based on this interpretation of Section 98, I found that the defendants' use of a declaration did not violate the Fair Debt Collection Practices Act ("FDCPA"), and I granted the defendants' motion for summary judgment. On appeal, the Ninth Circuit certified the question to the California Supreme Court. The California Supreme Court held that Section 98 requires an affiant to provide an address for service within 150 miles of the location of trial at which lawful service can be made that directs the affiant to attend trial. Based on this holding, the Ninth Circuit held that the defendants' declaration did not comport with the requirements of Section 98. The Ninth Circuit vacated my summary judgment order and remanded to determine if the declaration constituted a materially false or misleading statement under the FDCPA. On remand, the parties settled and stipulated to dismiss the plaintiff's individual claims with prejudice and class claims without prejudice.

MyMail, Ltd. v. ooVoo, LLC, 313 F. Supp. 3d 1095 (N.D. Cal. 2018), *vacated and remanded*, 934 F.3d 1373 (Fed. Cir. 2019). In this patent infringement case, I granted the defendants' motions for judgment on the pleadings. I reasoned that the asserted claims were too abstract and insufficiently inventive to be patent eligible. On appeal, the Federal Circuit held that I should have resolved the

parties' claim construction dispute before adjudging patent eligibility. U.S. Circuit Judge Alan D. Lourie dissented and stated that he would have affirmed. I subsequently resolved the parties' claim construction dispute. The defendants then made a renewed motion for judgment on the pleadings, which I granted. In *MyMail, LTD. v. ooVoo, LLC*, No. 2020-1825, 2021 WL 3671364 (Fed. Cir. Aug. 19, 2021), the Federal Circuit described my claim construction as thoughtful and affirmed my order granting the defendants' motion for judgment on the pleadings.

Nat'l Urb. League v. Ross, 489 F. Supp. 3d 939 (N.D. Cal.), *denying admin. stay*, 977 F.3d 698 (9th Cir.), *order clarified*, 491 F. Supp. 3d 572 (N.D. Cal.), *staying in part pending appeal*, 977 F.3d 770 (9th Cir.), *staying pending pet. for cert.*, 141 S. Ct. 18 (2020). On August 3, 2020, the federal government announced a new schedule for the 2020 Census. This schedule, known as the "Replan," condensed the total time to conduct the Census from 71.5 weeks to 49.5 weeks. Specifically, the Replan truncated three Census operations. Self-response compressed from 33.5 weeks to 29 weeks, with the deadline advancing from October 31 to September 30. Non-Response Follow-Up compressed from 11.5 weeks to 7.5 weeks, with the deadline advancing from October 31 to September 30. Lastly, data processing was halved from 26 weeks to 13 weeks, with the deadline advancing from April 30, 2021 to December 31, 2020. The plaintiffs—a group of advocacy organizations, cities, counties, and tribal groups—challenged the Replan on the grounds that the Replan violated the Administrative Procedure Act and the U.S. Constitution's Enumeration Clause. I granted the plaintiffs' motion for a temporary restraining order on September 4, 2020, and granted their motion for a preliminary injunction on September 24, 2020. The government then asked the Ninth Circuit and the U.S. Supreme Court to stay the preliminary injunction pending appeal. At the Ninth Circuit, the government first moved for an immediate administrative stay of the preliminary injunction. The Ninth Circuit denied that motion on September 30, 2020. The government then moved for a stay pending appeal, which the Ninth Circuit granted in part and denied in part on October 7, 2020. Specifically, the Ninth Circuit stayed the preliminary injunction to the extent the injunction stopped the government from trying to meet the December 31, 2020 statutory deadline for reporting the population counts used for congressional apportionment to the President. The Ninth Circuit did not stay the preliminary injunction of the Replan's September 30, 2020 deadline for data collection. The government then sought a stay from the Supreme Court on the ground that, without a stay, the government could not meet the December 31, 2020 statutory deadline. The Supreme Court granted the government's application on October 13, 2020. Specifically, the Supreme Court stayed the rest of the preliminary injunction pending a Ninth Circuit appeal and the disposition of any timely petition for a writ of certiorari. Although the Supreme Court did not issue an opinion, Justice Sotomayor published a dissent. After the Supreme Court's stay, the government did not meet the December 31, 2020 statutory deadline. The parties settled on April 22, 2021. On April 26, 2021, the U.S. Secretary of Commerce reported to the President the population counts used for

congressional apportionment.

Nguyen v. Nissan N. Am., Inc., No. 16-CV-05591-LHK, 2018 WL 1831857 (N.D. Cal. Apr. 9, 2018), *rev'd and remanded*, 932 F.3d 811 (9th Cir. 2019). I denied the plaintiff's motion for class certification after finding that the plaintiff failed to meet the requirements of Federal Rules of Civil Procedure 23(b)(3) and 23(c)(4). The Ninth Circuit held that the plaintiff's theory of liability did not require individualized analysis that might defeat predominance. The Ninth Circuit therefore reversed the denial of class certification and remanded. On remand, I denied the plaintiff's motion for class certification after finding that the plaintiff was subject to unique defenses that therefore rendered the plaintiff's claims atypical of either class that the plaintiff sought to certify. The plaintiff sought interlocutory appeal of the denial of class certification. The Ninth Circuit denied permission for interlocutory appeal in *Nguyen v. Nissan N. Am., Inc.*, No. 20-80138 (9th Cir. Nov. 19, 2020). On July 21, 2021, the parties voluntarily dismissed the case with prejudice as to the plaintiff's claims and without prejudice as to the claims of the putative class.

Northstar Fin. Advisors Inc. v. Schwab Investments, 807 F. Supp. 2d 871 (N.D. Cal. 2011), *rev'd in part, vacated in part, and remanded*, 779 F.3d 1036 (9th Cir. 2015). This case, which was reassigned to me from United States District Judge Susan Illston, involved several claims by investors in a Massachusetts business trust against the trustees and the trustees' investment advisors. Judge Illston had dismissed the plaintiffs' breach of contract and breach of fiduciary duty claims in the First Amended Complaint without prejudice. I then dismissed the plaintiffs' breach of contract claim in the Second Amended Complaint with prejudice because the plaintiffs did not add further allegations to the breach of contract claim that Judge Illston had dismissed. I dismissed the plaintiffs' breach of fiduciary duty claim in the Second Amended Complaint without prejudice because the claim, as alleged, was precluded by the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"). For the same reason, I dismissed the plaintiffs' third-party beneficiary claim against the investment advisors, which was added for the first time in the Second Amended Complaint. The plaintiffs then filed a Third Amended Complaint, which alleged a breach of fiduciary duty claim, an aiding and abetting breach of fiduciary duty claim, and a third-party beneficiary claim. Although the plaintiffs' Third Amended Complaint cured the SLUSA-related deficiency as to the breach of fiduciary duty claim, I dismissed the breach of fiduciary duty claim because plaintiffs had failed to allege a valid contract with the trustees. For the same reason, the plaintiffs could not bring an aiding and abetting breach of fiduciary duty claim. I dismissed the third-party beneficiary claim because the plaintiffs did not establish that they were an intended beneficiary of the agreement between the trustees and the investment advisors. The Ninth Circuit, in a 2-1 decision authored by Judge Edward Korman of the Eastern District of New York (sitting by designation), reversed with respect to both claims. For the breach of fiduciary claim, the Ninth Circuit applied corporate law principles and analogized to a corporate situation where certain

fundamental investment policies were adopted via shareholder vote and could constitute a valid contract between shareholders and defendants. Based on this analogy, the Ninth Circuit further determined that the plaintiffs had sufficiently alleged breach of contract and breach of fiduciary duty claims against the defendants, and that my decision to grant dismissal of these claims was thus unwarranted. For the third-party beneficiary claim, the Ninth Circuit determined that the contract between the trustees and the investment advisors obligated the advisors to discharge the trustees' duty to the plaintiffs. Accordingly, the Ninth Circuit held that my decision to grant dismissal of these claims was also unwarranted. Judge Carlos Bea dissented from the majority's decision.

Northstar Fin. Advisors Inc. v. Schwab Investments, 135 F. Supp. 3d 1059 (N.D. Cal. 2015), *aff'd in part, rev'd in part, and remanded*, 904 F.3d 821 (9th Cir. 2018). As described in the entry that immediately precedes this one, the Ninth Circuit reversed my decision to dismiss breach of contract, breach of fiduciary duty, aiding and abetting of breach of fiduciary duty, and third-party beneficiary claims by investors in a Massachusetts business trust against the trustees and the trustees' investment advisors. On remand, I denied a motion to dismiss the breach of fiduciary duty and aiding and abetting breach of fiduciary duty claims. I dismissed the breach of contract and third-party beneficiary claims with prejudice under Federal Rule of Civil Procedure 12(b)(6) because those claims were precluded by the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"). The Ninth Circuit, in a 2-1 decision authored by Judge Kathleen O'Malley of the Federal Circuit (sitting by designation), affirmed my decision that the claims were precluded by SLUSA. However, the Ninth Circuit reversed my decision to dismiss with prejudice because SLUSA is a jurisdictional bar that prevents only federal courts from hearing certain claims, not state courts. Accordingly, the Ninth Circuit held that I should have dismissed those claims without prejudice. The one dissent was a concurrence in part and a dissent in part. Specifically, Chief Judge Sidney Thomas dissented to the extent that he found that the breach of contract and third-party beneficiary claims as to a subset of the plaintiffs were not precluded by SLUSA. After the Ninth Circuit mandate issued, the parties stipulated to a dismissal without prejudice.

People v. Gautam, No. CC 785322 (Cal. Super. Ct. Dec. 16, 2008), *rev'd*, No. 1-09-AP-000670 (Cal. App. Dep't Super. Ct. Oct. 13, 2009) (copy supplied). The jury acquitted the defendant of two charges. I denied the defendant's motion for a finding of factual innocence and a sealing of arrest records as to the two tried charges. The Appellate Division of the Superior Court affirmed my denial of the defendant's motion for a finding of factual innocence and a sealing of arrest records as to the two tried charges, but reversed my finding of no factual innocence and no sealing of arrest records as to a third charge that was dismissed prior to the defendant's arraignment.

Ryan v. Fabela, No. 16-CV-04032-LHK, 2018 WL 10196531 (N.D. Cal. Feb. 2, 2018), *rev'd and remanded*, 765 F. App'x 241 (9th Cir. 2019). I denied the

defendant's motion for summary judgment after finding a genuine dispute of material fact as to whether the defendant had violated the plaintiff's First Amendment rights by retaliating against the plaintiff in violation of Section 1983. I also found that the defendant was not entitled to qualified immunity. The Ninth Circuit held that no case was sufficiently analogous to place the defendant on notice that the plaintiff did not fall within the policymaker exception to the First Amendment retaliation doctrine. Accordingly, the Ninth Circuit held that the defendant was entitled to qualified immunity and reversed and remanded the case. On remand, I entered judgment in favor of the defendant.

Smith v. Pride Mobility Prod. Corp., No. 16-CV-04411-LHK, 2017 WL 567482 (N.D. Cal. Feb. 12, 2017), *aff'd in part, rev'd in part*, 700 F. App'x 583 (9th Cir. 2017). After previously giving the plaintiff leave to amend, I granted with prejudice the defendant's motion to dismiss the plaintiff's claims for violation of the Unruh Civil Rights Act, the Americans with Disabilities Act, and California Civil Code Section 51.7(a), as well as claims for negligence and strict liability for manufacturing defect or design defect of both a lift and wheelchair. The Ninth Circuit held that liberally construed, the plaintiff's complaint had stated claims for manufacturing and design defect for both the lift and wheelchair. The Ninth Circuit therefore reversed and remanded those claims and affirmed dismissal of the remainder of the plaintiff's claims. On remand, I dismissed the plaintiff's case with prejudice for failure to prosecute.

Sutherland v. Francis, No. 12-CV-05110-LHK, 2014 WL 879697 (N.D. Cal. Mar. 3, 2014), *aff'd in part, rev'd in part, and remanded*, 647 F. App'x 686 (9th Cir. 2016). I dismissed the plaintiff's claims for breach of contract and common counts with prejudice because I concluded that the plaintiff had failed to state a claim after having already been given leave to amend claims. The Ninth Circuit affirmed my dismissal of the plaintiff's contract claims but held that the plaintiff's claims should have been dismissed without prejudice because amendment would not be futile. On remand, the plaintiff filed a third amended complaint, which I dismissed with prejudice.

Tandon v. Newsom, No. 20-CV-07108-LHK, — F. Supp. 3d —, 2021 WL 411375 (N.D. Cal. Feb. 5, 2021), *aff'd*, 992 F.3d 916 (9th Cir. 2021), *application for injunctive relief granted*, 141 S. Ct. 1294 (2021). The plaintiffs challenged restrictions imposed on private gatherings by the State of California and the County of Santa Clara to prevent the spread of COVID-19. The plaintiffs moved for a preliminary injunction and contended that they were likely to succeed on the merits of their claims that the private gatherings restrictions violated their rights to free speech, free exercise, due process, and equal protection. On February 5, 2021, I denied the plaintiffs' motion for a preliminary injunction. First, I concluded that the plaintiffs were unlikely to succeed on the merits of their claims. Specifically, as to the plaintiffs' free exercise claims, I held that the private gatherings restrictions were neutral and generally applicable because they applied equally to secular and religious gatherings and because the defendants had shown that other activities, such as visiting grocery stores, posed a lower risk of

spreading COVID-19 than gatherings. Second, I concluded that an injunction was not in the public interest due to the outbreak of COVID-19 that was occurring in California at the time of my ruling. The plaintiffs appealed my ruling, and the Ninth Circuit affirmed in full. The plaintiffs then sought an injunction pending appeal at the U.S. Supreme Court only as to their free exercise claim. On April 9, 2021, a 5-4 majority of the Supreme Court granted the plaintiffs' application for an injunction pending appeal. The Supreme Court concluded that the private gatherings restrictions were not neutral and generally applicable because they treated some comparable secular activities, such as visiting grocery stores, more favorably than religious gatherings. Chief Justice Roberts would have denied the plaintiffs' application for an injunction pending appeal, and Justice Kagan, joined by Justices Breyer and Sotomayor, filed a dissenting opinion. On June 24, 2021, I granted the plaintiffs' and State defendants' stipulation of entry of a permanent injunction against capacity limitations on religious services; dismissal of the plaintiffs' otherwise remaining free exercise claims with prejudice; an award of attorneys' fees for the plaintiffs; and dismissal of the plaintiffs' free speech, due process, and equal protection claims without prejudice. On July 7, 2021, the Ninth Circuit granted the parties' stipulated motion to voluntarily dismiss the appeal.

Uniloc USA Inc. v. LG Elecs. USA Inc., 379 F. Supp. 3d 974 (N.D. Cal. 2019), *rev'd and remanded*, 957 F.3d 1303 (Fed. Cir. 2020). I granted the defendant's motion to dismiss after finding that the plaintiff's asserted patents claims were directed to an ineligible subject matter under 35 U.S.C. § 101 and did not contain an inventive concept. The Federal Circuit reversed and remanded after finding that the claims were directed to a patent-eligible improvement in computer functionality. On remand, the parties settled and stipulated to dismiss all claims and counterclaims between the parties.

United States v. Martinez, No. 17-CR-00257-LHK-1, 2018 WL 3861831 (N.D. Cal. Aug. 14, 2018), *vacated and remanded*, 811 F. App'x 396 (9th Cir. 2020), *cert. denied*, No. 20-7038 (U.S. Apr. 19, 2021). A federal grand jury indicted the defendant for being a domestic violence misdemeanant in possession of a firearm in violation of 18 U.S.C. § 922(g)(9). The defendant then moved to suppress evidence found in a search of his car and his apartment. I denied the defendant's motion and later found the defendant guilty after a bench trial on stipulated facts. The Ninth Circuit vacated my denial of the motion to suppress and held that, because California had legalized the possession of limited amounts of marijuana, the odor of marijuana alone did not provide probable cause to search the defendant's car. The Ninth Circuit remanded for further consideration of whether there was probable cause to search the defendant's car based on other state law violations and whether the defendant consented to the search of his car. The Ninth Circuit otherwise upheld my rulings, including my decision not to suppress evidence seized from the defendant's apartment. The defendant petitioned the U.S. Supreme Court for certiorari, which was denied on April 19, 2021.

United States v. Guntipally, No. 16-CR-00189-LHK, No. 203 (N.D. Cal. Nov. 29, 2017), *vacated and remanded*, 735 F. App'x 432 (9th Cir. 2018). After I sentenced the defendant, the Ninth Circuit held that the defendant should have been personally invited to speak at her sentencing. Furthermore, the Ninth Circuit held that, because the defendant could have received a shorter sentence, the denial of the defendant's right to allocution was not harmless error. The Ninth Circuit therefore vacated the defendant's sentence and remanded for resentencing. On remand, I denied the defendant's motion to withdraw her guilty plea and I imposed a new sentence. In *United States v. Guntipally*, 804 F. App'x 868 (9th Cir. 2020), the Ninth Circuit affirmed my decision.

United States v. Howard, No. 14-CR-00390, No. 45 (N.D. Cal. May 6, 2015) (oral proceeding), *remanded*, 793 F.3d 1113 (9th Cir. 2015). This case concerned conditions regarding the revocation of pretrial release. United States Magistrate Judge Howard R. Lloyd revoked the defendant's pretrial release after finding that the defendant had violated the terms of the defendant's pretrial release by contacting an employee of the United States Postal Service who was a potential witness. The defendant motioned to revoke or amend Judge Lloyd's order for pretrial detention. I denied the defendant's motion to revoke or amend the pretrial detention order after finding that the defendant posed a danger to the community because the defendant potentially tampered with witnesses in a criminal case. The Ninth Circuit determined that it was unclear based on the record whether I had found that there was probable cause to believe that the defendant had committed a crime while on release or whether there was clear and convincing evidence that the defendant had violated a condition of pretrial release. The case was remanded for clarification and further findings if necessary. On remand, the defendant entered a guilty plea, and I ordered the defendant released from custody after reimposing the existing terms of pretrial release with the additional conditions that defendant be truthful to Pretrial Services and report any change of circumstances related to his bond conditions, including his residence, to Pretrial Services.

United States v. Tinker, No. 11-CR-00090-LHK-20, No. 712 (N.D. Cal. Nov. 5, 2018), *vacated and remanded*, 793 F. App'x 548 (9th Cir. 2020). I denied the defendant's motion to proceed in forma pauperis ("IFP") after finding that the defendant was not entitled to IFP status because he had waived his right to seek Section 3582(c)(2) relief in his plea agreement. The defendant appealed the denial of IFP status. The Ninth Circuit vacated and remanded my decision because the Ninth Circuit held that a decision published after my order established that a district court may not sua sponte raise a Section 3582(c)(2) waiver.

Wilkins v. Cty. of Alameda, No. 10-CV-03090, 2012 WL 2568219 (N.D. Cal. July 2, 2012), *aff'd in part, rev'd in part, and remanded*, 571 F. App'x 621 (9th Cir. 2014). The Ninth Circuit affirmed my decision to grant the defendant's motion for summary judgment on the plaintiff's fundamental right-to-vote claim. However, the Ninth Circuit held that the plaintiff, who was proceeding *pro se*, had

not been provided sufficient notice that the defendants were moving for summary judgment on the plaintiff's equal protection and procedural due process claims. Accordingly, the Ninth Circuit reversed my decision to grant summary judgment on these claims and remanded the case for further proceedings.

Xilinx, Inc. v. Papst Licensing GMBH & Co. KG, 113 F. Supp. 3d 1027 (N.D. Cal. 2015), *vacated in part sub nom. Altera Corp. v. Papst Licensing GmbH & Co. KG*, 691 F. App'x 907 (Fed. Cir. 2016), and *rev'd in part*, 848 F.3d 1346 (Fed. Cir. 2017). Plaintiffs Altera Corporation and Xilinx, Inc. each sought a declaratory judgment that their products did not infringe the defendants' patents and that the defendants' patents were invalid. I granted the defendants' motion to dismiss for lack of personal jurisdiction and denied the plaintiffs' request for additional jurisdictional discovery. The plaintiffs appealed. After the appeal was docketed, a suit between Altera and Papst was transferred from the District of Delaware to the Northern District of California, where Papst agreed to be subject to jurisdiction with respect to the dispute with Altera. The Federal Circuit therefore held that Altera's appeal was moot. The Federal Circuit subsequently held that specific personal jurisdiction existed over Papst with respect to Xilinx's declaratory judgment action, and therefore the Federal Circuit reversed and remanded. On remand, the parties stipulated to dismiss all claims without prejudice.

Young v. Achtley, No. 20-CV-08349-LHK, 2021 U.S. Dist. LEXIS 77279 (N.D. Cal. Feb. 4, 2021) (copy supplied), *vacated and remanded sub nom. Young v. Matthew*, No. 21-15341, 2021 U.S. App. LEXIS 11152 (9th Cir. Apr. 16, 2021). The plaintiff, a California state prisoner proceeding *pro se*, filed a civil rights complaint under 42 U.S.C. § 1983. The plaintiff's complaint was accompanied by an application to proceed in forma pauperis ("IFP"), but the IFP application was incomplete because it did not include the plaintiff's account statement, which is required by the IFP statute. The day I received the complaint I sent a notice to the plaintiff informing the plaintiff that within 28 days plaintiff had to file a complete IFP application. Four weeks after that deadline, the plaintiff had not responded to the notice. I therefore dismissed the complaint without prejudice. The plaintiff then filed a notice of appeal, which divested my jurisdiction over the case. Three weeks after I lost jurisdiction, I received a complete IFP application from the plaintiff. On appeal, the Ninth Circuit vacated my dismissal order. The Ninth Circuit concluded that the plaintiff had filed an application to proceed IFP contemporaneously with the complaint, and remanded the case with instructions to reconsider the contemporaneously filed IFP application. The Ninth Circuit did not address the fact that the contemporaneously filed IFP application was incomplete. On remand, I reconsidered the contemporaneously filed IFP application and concluded that the case was properly dismissed because the contemporaneously filed IFP application was incomplete. However, because the plaintiff had filed a complete IFP application after he filed his notice of appeal, I vacated the entry of judgment and reopened the case to consider the plaintiff's completed IFP application. I also concluded that because plaintiff had previously

filed frivolous lawsuits on six occasions and did not qualify for the imminent danger exception, the Prison Litigation Reform Act of 1995 ("PLRA") barred plaintiff from proceeding IFP. I therefore ordered plaintiff to show cause why his motion for leave to proceed IFP should not be denied and the case should not be dismissed. I also noted that plaintiff may avoid dismissal by paying the filing fee. The plaintiff responded to the order to show cause, but did not pay the filing fee. After reviewing the record and applicable law, I found that the PLRA barred the plaintiff from proceeding IFP. Therefore, I denied the plaintiff's application to proceed IFP and dismissed this action without prejudice to reopening if the plaintiff pays the filing fee.

Zhang v. Cty. of Monterey, No. 17-CV-00007-LHK, 2018 WL 1933588 (N.D. Cal. Apr. 24, 2018), *aff'd in part, rev'd in part, and remanded*, 804 F. App'x 454 (9th Cir. 2020). A former employee of the County of Monterey sued the County for firing her. The plaintiff brought eight claims: (1) discrimination on the basis of race and national origin in violation of Title VII; (2) discrimination on the basis of marital status, race, and national origin in violation of the Fair Employment and Housing Act; (3) discrimination on the basis of race in violation of 42 U.S.C. § 1981; (4) deprivation of a property interest without due process of law in violation of the Fourteenth Amendment to the U.S. Constitution; (5) deprivation of a liberty interest without due process of law in violation of the Fourteenth Amendment to the U.S. Constitution; (6) deprivation of a property interest without due process of law in violation of the California Constitution; (7) writ of mandate under California Code of Civil Procedure § 1085; and (8) writ of mandate under California Code of Civil Procedure § 1094.5. I granted summary judgment to the County on seven of the plaintiff's eight claims and declined to exercise supplemental jurisdiction over the plaintiff's claim for writ of mandate under California Code of Civil Procedure § 1085. On appeal, the Ninth Circuit affirmed my judgment as to five of the plaintiff's claims. As to the two due process claims, the Ninth Circuit held there was a genuine dispute of fact as to when the plaintiff's probationary term of employment had begun. The Ninth Circuit thus reversed the summary judgment for the County on the plaintiff's two due process claims. As to the petition for writ of mandate under California Code of Civil Procedure § 1085, the Ninth Circuit held that I had not abused my discretion by declining supplemental jurisdiction, but remanded for me to consider afresh whether to exercise supplemental jurisdiction. On remand, I presided over a jury trial on the plaintiff's two due process claims. The jury rendered a verdict for the County on both claims on June 10, 2021. I exercised supplemental jurisdiction over the plaintiff's petition for a writ of mandate under California Code of Civil Procedure § 1085 and denied the petition on July 8, 2021. Judgment was entered in favor of the defendants on all claims on July 8, 2021. On August 5, 2021, the plaintiff filed: (1) a motion for judgment as a matter of law or for a new trial as to the jury verdict; and (2) a motion for an amendment of the ruling or for a new trial as to the petition for a writ of mandate. These motions remain pending. On August 6, 2021, the plaintiff filed a notice of appeal. The appeal is pending.

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 U.S. District Judge, I have issued approximately 3,250 opinions. All of my opinions are filed and stored electronically with the Northern District of California case management system. Many of my decisions are also available on Westlaw and Lexis. Approximately eight percent of my decisions have been selected for publication.

As a California Superior Court Judge, I issued six written opinions, all of which were unpublished in accordance with Superior Court practice. These opinions are part of the case files that are publicly available in the Santa Clara County Superior Court Clerk's Office.

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.

Art of Living Found. v. Does 1-10, No. 10-CV-05022-LHK, 2011 WL 5444622 (N.D. Cal. Nov. 9, 2011)

City of San Jose v. Trump, 497 F. Supp. 3d 680 (N.D. Cal.) (*per curiam*), *vacated and remanded*, 141 S. Ct. 1231 (2020) (*per curiam*)

Diamond S.J. Enter., Inc. v. City of San Jose, 395 F. Supp. 3d 1202 (N.D. Cal. 2019)

Fraley v. Facebook, Inc., 830 F. Supp. 2d 785 (N.D. Cal. 2011)

Hotop v. City of San Jose, No. 18-CV-02024-LHK, 2018 WL 4850405 (N.D. Cal. Oct. 4, 2018), *aff'd*, 982 F.3d 710 (9th Cir. 2020)

In re Application for Tel. Info. Needed for a Crim. Investigation, 119 F. Supp. 3d 1011 (N.D. Cal. 2015)

In re Yahoo Mail Litig., 7 F. Supp. 3d 1016 (N.D. Cal. 2014)

Karl v. City of Mountlake Terrace, 678 F.3d 1062 (9th Cir. 2012)

Katzman v. L.A. Cty. Metro. Transp. Auth., 72 F. Supp. 3d 1091 (N.D. Cal. 2014)

Marks v. Davis, 112 F. Supp. 3d 949 (N.D. Cal. 2015)

Parrish v. Solis, No. 11-CV-01438, 2014 WL 1921154 (N.D. Cal. May 13, 2014)

People v. Frost, No. BB834193, slip op. (Cal. Super. Ct. Mar. 27, 2009) (copy supplied)

Steshenko v. Gayrard, 70 F. Supp. 3d 979 (N.D. Cal. 2014)

United States v. Chavez, No. 15-CR-00285-LHK, 2019 WL 1003357 (N.D. Cal. Mar. 1, 2019)

United States v. Wolfenbarger, No. 16-CR-00519-LHK-1, 2019 WL 6716357 (N.D. Cal. Dec. 10, 2019)

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 sat by designation on the U.S. Court of Appeals for the Ninth Circuit in March 2012, with Circuit Judges Ferdinand Fernandez and Richard Paez. I authored the unanimous opinion in *Karl v. City of Mountlake Terrace*, 678 F.3d 1062 (9th Cir. 2012).

In *Karl*, the plaintiff sought relief pursuant to 42 U.S.C. § 1983. The plaintiff alleged that he had been subject to First Amendment retaliation on the basis of subpoenaed deposition testimony that he had given as a private citizen in a civil rights lawsuit. The district court denied qualified immunity to the defendants, and the panel affirmed. As the panel observed, the plaintiff had sufficiently demonstrated a constitutional violation and had sufficiently demonstrated that the relevant legal principles had been clearly established prior to the events in question.

The remaining decisions, listed below, were unanimous memorandum opinions:

Blackburn v. Wash. Dep't of Soc. & Health Servs., 472 F. App'x 569 (9th Cir. 2012)

Locals 302 & 612 Int'l Union of Operating Eng'rs Constr. Indus. Health & Sec. Fund v. Ace Paving Co., 471 F. App'x 796 (9th Cir. 2012)

Nw. Adm'rs, Inc. v. Ace Paving Co., 471 F. App'x 795 (9th Cir. 2012)

Oberg v. Astrue, 472 F. App'x 488 (9th Cir. 2012)

United States v. Vaksman, 472 F. App'x 447 (9th Cir. 2012)

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general

description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The judges on the U.S. District Court for the Northern District of California give the Clerk's Office a list of individuals and entities in whose cases we would recuse. I have provided, and regularly updated, such a list to the Clerk's Office. I recused myself *sua sponte* in the following cases involving parties or lawyers that were on my automatic recusal list, but were assigned to me. The Clerk's Office reassigned these cases:

Ali v. eBay, Inc., 17-CV-06589-BLF (N.D. Cal.)
Altis Semiconductor, SNC v. Qimonda Licensing, LLC, 12-CV-03227-JST (N.D. Cal.)
Bay Area Surgical Grp. Inc. v. Aetna Life Ins. Co., 13-CV-05430-EJD (N.D. Cal.)
Bd. of Trs. of Leland Stanford Jr. Univ. v. Praxair Distribution Inc., 17-CV-01489-LHK (N.D. Cal.)
Bd. of Trs. of Leland Stanford Jr. Univ. v. Zhang, 19-CV-02904-LHK (N.D. Cal.)
Bendis v. Singer, 19-CV-01405-LHK (N.D. Cal.)
Berman-Cheung v. Cook Grp., Inc., 17-CV-02564-LHK (N.D. Cal.)
Burgess v. Otto Bock Healthcare, 14-CV-00302-EJD (N.D. Cal.)
Elias v. Hewlett-Packard Co., 12-CV-00421-BLF (N.D. Cal.)
Est. of Criswell v. Prudential Ins. Co. of Am., 17-CV-01843-LHK (N.D. Cal.)
Ferranti v. Hewlett-Packard Co., 13-CV-03847-EJD (N.D. Cal.)
Fisher v. eBay, Inc., 17-CV-04623-LHK (N.D. Cal.)
Gordon v. Stanford Med. Chief, 20-CV-01591-LHK (N.D. Cal.)
Hewlett-Packard Co. & Consol. Subsidiaries v. United States, 09-CV-02882-JW (N.D. Cal.)
In re Application of Hewlett-Packard Co., 13-MC-80266-RMW (N.D. Cal.)
Johnson v. Colvin, 13-CV-03967-RMW (N.D. Cal.)
Masuda v. Packard Children's Hosp. at Stanford, 20-CV-09389-LHK (N.D. Cal.)
Mullins v. HP, Inc., 17-CV-00141-CRB (N.D. Cal.)
Pauly v. Stanford Hosp., 10-CV-05582-SI (N.D. Cal.)
Perez v. DXC Tech. Servs. LLC, 17-CV-06066-BLF (N.D. Cal.)

Petroleos Mexicanos v. Hewlett-Packard Co., 14-CV-05292-BLF (N.D. Cal.)
Romero v. HP Inc., 16-CV-05415-EJD (N.D. Cal.)
Santa Clara Valley Hous. Grp., Inc. v. United States, 08-CV-05097-WHA (N.D. Cal.)
Sebastian v. Lucile Packard Children's Hosp., 14-CV-01941-BLF (N.D. Cal.)
SoftVault Sys., Inc. v. HP Inc., 16-CV-00379-JSW (N.D. Cal.)
Spansion LLC v. Samsung Elecs. Co. Ltd., 10-CV-03446-JF (N.D. Cal.)
Stanford Healthcare v. Humana Ins. Co., Inc., 18-CV-06706-LHK (N.D. Cal.)
Stanford Health Care v. Usable Mut. Ins. Co., 17-CV-01644-LHK (N.D. Cal.)
Stanford Hosp. & Clinics v. Haw. Mgmt. All. Assoc., 12-CV-05273-WHA (N.D. Cal.)
Stanford Hosp. & Clinics v. Premera Blue Cross, 15-CV-01809-BLF (N.D. Cal.)
Tamara v. Bd. of Dirs. of Stanford Hosp. & Clinics, 15-CV-02158-EJD (N.D. Cal.)
Taylor v. Bd. of Trs. of Leland Stanford Jr. Univ., 18-CV-05248-LHK (N.D. Cal.)
Tricome v. eBay, Inc., 10-CV-03214-JF (N.D. Cal.)
United States v. Breejen, 14-CR-00501-BLF (N.D. Cal.)
United States v. Kalbasi, 15-CR-00365-BLF (N.D. Cal.)
United States v. Masoud, 14-CR-00069-DLJ (N.D. Cal.)
United States v. Pathan, 11-CR-00352-EJD (N.D. Cal.)
United States v. Shaikh, 09-CR-01049-EJD (N.D. Cal.)
United States v. Stringer, 11-CR-00116-EJD (N.D. Cal.)
Velasquez v. Stanford Hosp. & Clinics, 18-CV-03227-LHK (N.D. Cal.)
Webber v. Hewlett-Packard Co., 14-CV-01724-EJD (N.D. Cal.)
Xilinx, Inc. v. Invention Inv. Fund I LP, 11-CV-00671-EJD (N.D. Cal.)
York Cty. on behalf of Cty. of York Ret. Fund v. HP Inc., 20-CV-07835-JSW (N.D. Cal.)
Zepeda v. Paypal, Inc., 10-CV-02500-SBA (N.D. Cal.)

I recused myself *sua sponte* in the following cases because my husband, as an Associate Justice of the Supreme Court of California, had denied habeas relief:

Bautista v. Koenig, 20-CV-01893-LHK (N.D. Cal.)
Bennett v. Asuncion, 16-CV-01918-LHK(N.D. Cal.)
Bennett v. Asuncion, 17-CV-06821-LHK (N.D. Cal.)
Brooks v. Lozano, 20-CV-01711-LHK (N.D. Cal.)
Cerda v. Biter, 16-CV-05203-LHK (N.D. Cal.)
Clay v. Neuschnid, 19-CV-06320-LHK (N.D. Cal.)
Cook v. Foss, 20-CV-01119-LHK (N.D. Cal.)
Cooper v. Davis, 20-CV-03253-LHK (N.D. Cal.)
Cormier v. Neuschmid, 19-CV-00916-LHK (N.D. Cal.)
Farrish v. Sherman, 14-CV-01263-LHK (N.D. Cal.)
Fuller v. Muniz, 18-CV-06379-LHK (N.D. Cal.)
Gates v. Neuschnid, 19-CV-07780-LHK (N.D. Cal.)
Gutierrez v. Sullivan, 20-CV-05594-LHK (N.D. Cal.)
Hedgepeth v. Madden, 20-CV-0858-LHK (N.D. Cal.)
Helms v. Madden, 18-CV-1740-LHK (N.D. Cal.)
Herrera v. Foss, 18-CV-06757-LHK (N.D. Cal.)
Hoover v. Arnold, 17-CV-05721-LHK (N.D. Cal.)

Hoover v. Koenig, 19-CV-08352-LHK (N.D. Cal.)
Jenkins v. Bloom, 20-CV-03251-LHK (N.D. Cal.)
Johnson v. Spearman, 17-CV-00429-LHK (N.D. Cal.)
Johnson v. Tampkins, 17-CV-00385-LHK (N.D. Cal.)
Kamfolt v. Lizarraga, 17-CV-00970-LHK (N.D. Cal.)
Kester v. Warden of Salinas Valley State Prison, 16-CV-00700-LHK (N.D. Cal.)
Lopez v. Muniz, 17-CV-03390-LHK (N.D. Cal.)
Martinez v. Spearman, 20-CV-07025-LHK (N.D. Cal.)
Masters v. Broomfield, 20-CV-08206-LHK (N.D. Cal.)
McDaniels v. Espinoza, 18-CV-03495-LHK (N.D. Cal.)
McGowan v. Davis, 18-CV-05556-LHK (N.D. Cal.)
Mendoza v. Holland, 15-CV-05620-LHK (N.D. Cal.)
Molina v. Muniz, 16-CV-00207-LHK (N.D. Cal.)
Montalbo v. Frauenheim, 15-CV-05372-LHK (N.D. Cal.)
Murray v. Lozano, 20-CV-00471-LHK (N.D. Cal.)
Parineh v. Martel, 18-CV-01002-LHK (N.D. Cal.)
Pearson v. Davis, 18-CV-06651-LHK (N.D. Cal.)
Perez v. DuCart, 15-CV-02010-JSW (N.D. Cal.)
Poletti v. Hatton, 17-CV-01936-LHK (N.D. Cal.)
Prescott v. Santoro, 16-CV-01359-LHK (N.D. Cal.)
Reta v. Ndoh, 19-CV-03140-LHK (N.D. Cal.)
Robinson v. Warden, 14-CV-4797-LHK (N.D. Cal.)
Rodewald v. Lizarraga, 18-CV-02513-LHK (N.D. Cal.)
Rogers v. Kibler, 21-CV-04972-LHK (N.D. Cal.)
Sanchez v. Koenig, 20-CV-02610-LHK (N.D. Cal.)
Smith v. Sullivan, 17-CV-01900-LHK (N.D. Cal.)
Thomas v. Foss, 19-CV-08142-LHK (N.D. Cal.)
Thomas v. Santoro, 16-CV-05646-LHK (N.D. Cal.)
Tidwell v. Davis, 17-CV-00903-LHK (N.D. Cal.)
Torres v. Frauenheim, 16-CV-06054-LHK (N.D. Cal.)
Turner v. Neuschmid, 20-CV-06324-LHK (N.D. Cal.)
Valadez v. Frauenheim, 19-CV-06649-LHK (N.D. Cal.)
Vinyard v. Asuncion, 17-CV-01937-LHK (N.D. Cal.)
Vu v. Rackley, 16-CV-06600-LHK (N.D. Cal.)
Watts v. Black, 20-CV-00568-LHK (N.D. Cal.)
West v. Hatton, 17-CV-01440-LHK (N.D. Cal.)
Westover v. Hatton, 16-CV-07404-LHK (N.D. Cal.)
Whitfield v. Pfeiffer, 18-CV-07106-LHK (N.D. Cal.)
Womack v. Warden, 18-CV-01636-LHK (N.D. Cal.)

I recused myself *sua sponte* in the following case because my husband, as an Associate Justice of the Supreme Court of California, had ruled on the writ of mandate and granted the petition for review:

Chatman v. Chappell, 07-CV-00640-LHK (N.D. Cal.)

I recused myself *sua sponte* in the following case because the State Bar of California is an administrative arm of the Supreme Court of California where my husband is an Associate Justice:

Vartanian v. State Bar of Cal., 18-CV-00826-LHK (N.D. Cal.)

I recused myself *sua sponte* in the following case when the plaintiff informed me that my former law firm had represented a party in a related case:

Dillon v. Cont'l Cas. Co., 10-CV-05238-EJD (N.D. Cal.)

I recused myself *sua sponte* in the following cases where I was a member of an organization that was named as a proposed *cy pres* recipient of class action settlement funds:

C.M.D. v. Facebook, Inc., 12-CV-01216-RS (N.D. Cal.)
Fraley v. Facebook, 11-CV-01726-RS (N.D. Cal.)

I recused myself *sua sponte* in the following cases where the California Superior Court for the County of Santa Clara, its judges with whom I served, and/or I was named as a defendant, or where an order I had issued as a Superior Court Judge was directly related to the federal case:

Beaujayam v. Manoukian, 11-CV-05710-SI (N.D. Cal.)
Hiramanek v. Clark, 13-CV-00228-RMW (N.D. Cal.)
Marosi v. Rushing, 13-CV-05198-RS (N.D. Cal.)
Merritt v. McKenney, 13-CV-01391-JSW (N.D. Cal.)
Morris v. Koh, 15-CV-01689-JD (N.D. Cal.)
Morris v. Sandoval, 12-CV-06132-JD (N.D. Cal.)
Ou-Young v. Roberts, 14-MC-80017-RMW (N.D. Cal.)
P. v. Terman Apartments, 12-CV-00256-JST (N.D. Cal.)
Sepehry-Fard v. Dep't Stores Nat'l Bank, 13-CV-03131-WHO (N.D. Cal.)
Shao v. Wang, 14-CV-01912-WBS (N.D. Cal.)

I recused myself *sua sponte* in the following cases involving the Internal Revenue Service ("IRS") during the time the IRS examined my husband's and my 2007 federal income tax return, which we had timely filed. The IRS requested additional information about the mortgage interest expense deductions on our primary residence, which we sold in 2007. Stanford University issues Deferred Interest Program loans to its faculty members for their primary residence. My husband had received such a loan because he was on the Stanford faculty. After we provided the additional information, the IRS accepted our mortgage interest expense deductions and 2007 tax return:

United States v. Genov, 10-CV-03340-RMW (N.D. Cal.)
United States v. Mahallati, 11-CV-01840-JF (N.D. Cal.)

United States v. Udovich, 10-CV-04094-JW (N.D. Cal.)

I recused myself *sua sponte* in the following cases because I learned sensitive information about the defendants when handling representation issues in the criminal case:

Bridges v. Geringer, 13-CV-01290-EJD (N.D. Cal.)
SEC v. GLR Cap. Mgmt., LLC, 12-CV-02663-EJD (N.D. Cal.)
United States v. Geringer, 12-CR-00888-EJD (N.D. Cal.)

I recused myself *sua sponte* in the following case because a named party was an employee in our courthouse:

Younger v. Michael & Assocs., P.C., 13-CV-01680-YGR (N.D. Cal.)

I recused myself *sua sponte* in the following case because the defendant physically attacked a Deputy United States Marshal in the San Jose Courthouse:

United States v. Gonzalez, 17-CR-00436-LHK (N.D. Cal.)

I recused myself *sua sponte* in the following cases because the *pro se* litigants sued me for prior rulings in their cases:

Ilaw v. CVS Retail, 20-CV-02183-LHK (N.D. Cal.)
Ilaw v. Littler Mendelson, PC, 20-CV-03566-LHK (N.D. Cal.)
In re: Ou-Young, 15-MC-80033-EJD (N.D. Cal.)
Magee v. Koh, 18-CV-02363-LHK (N.D. Cal.)
Magee v. Reardon, 18-CV-00672-LHK (N.D. Cal.)
Ou-Young v. Leavy, 19-CV-07232-LHK (N.D. Cal.)
Ou-Young v. Stone, 19-CV-07231-LHK (N.D. Cal.)
United States v. Ou-Young, 17-CR-00263-LHK (N.D. Cal.)
Van v. Black Angus Steakhouses, LLC, 17-CV-06329-LHK (N.D. Cal.)
Van v. Wal-Mart Stores, Inc., 08-CV-05296-PSG (N.D. Cal.)

I recused myself *sua sponte* in the following case because the defendant and his counsel discussed in open court their disagreements about the merits of pretrial motions that the defendant wanted filed:

United States v. Daniels, 19-CR-00709-LHK (N.D. Cal.)

I recused myself in advance of a motion for reassignment being heard because the parties and I discussed the substance of the case at a status conference:

United States v. Gomez, 11-CR-00955-DLJ (N.D. Cal.)

I recused myself *sua sponte* in the following case because a party had signed the

Congressional Asian Pacific American Caucus's letter in support of my then-pending Ninth Circuit nomination:

Mike Honda for Congress v. Parvizshahi, 16-CV-5416-EJD (N.D. Cal.)

I recused myself *sua sponte* in the following cases because a friend's spouse was a party or worked for a party:

Navigant Consulting, Inc. v. Navigant Solutions, LLC, 16-CV-00126-SBA (N.D. Cal.)
Yaron v. Intersect ENT, Inc., 19-CV-2647-JSW (N.D. Cal.)

In the following cases, a motion for recusal was filed, which I denied upon finding that the motion was frivolous:

Balik v. City of Cedar Falls, 16-CV-04070-LHK (N.D. Cal.)
Burkhart v. Gonzalez, 10-CV-01967-LHK (N.D. Cal.)
Ciampi v. City of Palo Alto, 09-CV-02655-LHK (N.D. Cal.)
Davis v. U.S. Olympic Comm., 12-CV-02999-LHK (N.D. Cal.)
In re: High-Tech Emp. Antitrust Litig., 11-CV-02509-LHK (N.D. Cal.)
Ou-Young v. Vasquez, 12-CV-02789-LHK (N.D. Cal.)
Sepehry-Fard v. Select Portfolio Serv., Inc., 14-CV-05142-LHK (N.D. Cal.)
Shao v. McManis Faulkner, LLP, 14-CV-01137-LHK (N.D. Cal.)
Wilkins v. Picetti, 10-CV-02818-LHK (N.D. Cal.)

As a California Superior Court Judge, I recused myself *sua sponte* in the following cases where a party was on my automatic recusal list, where there was an appearance by an attorney who had previously represented a relative of mine, or where an attorney was a close friend:

Bd. of Trs. of Stanford Univ. v. Ham, 1-10-CV-171121 (Cal. Super. Ct.)
People v. Atwal, CC778468 (Cal. Super. Ct.)
People v. Barajas, CC772683 (Cal. Super. Ct.)
People v. Garcia, CC772756 (Cal. Super. Ct.)
People v. Rimola, CC789359 (Cal. Super. Ct.)
Stanford Hosp. & Clinics v. Trevino, 1-10-CH-002878 (Cal. Super. Ct.)
Stanford Hosp. & Clinics v. Trevino, 1-10-CH-002894 (Cal. Super. Ct.)
Stanford Univ. v. Cruz, 1-09-CH-002705 (Cal. Super. Ct.)
Stanford Univ. v. Robert, 1-10-CH-002968 (Cal. Super. Ct.)
Watson Court Holdings v. Hirsch Cap. Corp., 1-09-CV-134746 (Cal. Super. Ct.)
Yam v. Robert, 1-10-CH-003075 (Cal. Super. Ct.)

I recused myself *sua sponte* in the following case where one of the parties repeatedly sent me disturbing letters:

E. Side Union High Sch. v. Sendejo, 1-10-CH-002884 (Cal. Super. Ct.)

Having searched my files, as well as the Santa Clara Superior Court's Criminal Justice Information Control Database, I have not identified further specific instances in which I recused myself *sua sponte*. However, I recall *sua sponte* recusing myself in a few additional cases where there was an appearance by an attorney who had previously represented another relative of mine.

In addition to these recusals, California Code of Civil Procedure ("CCCP") § 170.6 gives litigants a process by which they may disqualify a state court judge without any showing of cause. Such disqualifications are fairly routine in Santa Clara Superior Court. Defense counsel filed CCCP § 170.6 motions in the following cases, which, except for one, were therefore automatically reassigned.

Deutsche Bank Nat'l Trust Co. v. Mesbahi, 1-10-CV-162871 (Cal. Super. Ct.)
Fan v. Arredondo, 1-10-CH-002934 (Cal. Super. Ct.)
Goldberg v. Campbell, 1-10-CH-002923 (Cal. Super. Ct.)
HSBC Bank USA v. Dang, 1-10-CV-164334 (Cal. Super. Ct.)
People v. Duffy, BB940994 (Cal. Super. Ct.) (I denied the § 170.6 motion as untimely, and the case was not automatically reassigned)
People v. Macareno, BB942323 (Cal. Super. Ct.)
People v. McAvoy, CC812306 (Cal. Super. Ct.)
People v. Moreno, BB411706 (Cal. Super. Ct.)
People v. Williams, CC806274 (Cal. Super. Ct.)
People v. Woo, CC817370 (Cal. Super. Ct.)
Pham v. Avila, 1-10-CV-167646 (Cal. Super. Ct.)
Ragonesi v. Abernerthy, 1-10-CV-169449 (Cal. Super. Ct.)
Thrappas v. Taylor, 1-10-CV-169146 (Cal. Super. Ct.)
Tragoutsis v. Castillo, 1-10-CV-166945 (Cal. Super. Ct.)
Wachovia Mortg., FSB v. Guancione, 1-09-CV-157228 (Cal. Super. Ct.)
Weaver Land Corp. v. Rios, 1-10-CV-166451 (Cal. Super. Ct.)

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office other than judicial 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.

Women for Obama, Northern California, Summer and Fall 2007. As a volunteer, I participated in an organizational meeting and some conference calls and helped recruit people to attend a fundraising event.

Kerry-Edwards Presidential Campaign, Las Vegas, Nevada, October 2004. As a volunteer, I walked precincts to hand out literature and canvass potential voters.

John Chiang for California State Controller, March 2006. As a volunteer, I hosted a fundraiser at my home.

Margaret Abe-Koga for City Council of Mountain View, California, Fall 2004. As a volunteer, I hosted a meet and greet/fundraiser at my home.

Democratic National Convention, Los Angeles, California, August 2000. As a volunteer, I filled convention packets, and I believe I was designated as a driver, but I do not recall driving anyone.

Barbara Boxer Senatorial Re-Election Campaign, Los Angeles, California, 1998. As a volunteer, I participated in phone banking, mailed solicitations, and attended various campaign events.

Dukakis Presidential Campaign 1987 – 1988, Boston, Massachusetts and New Hampshire. As a volunteer, I helped coordinate campaign efforts at various college campuses across the nation, and I participated in door-to-door canvassing in New Hampshire.

Dukakis Gubernatorial Re-Election Campaign, Cambridge and Boston, Massachusetts, 1986. As a volunteer, I distributed leaflets at events and held signs on election day.

James R. Jones Senatorial Campaign, Oklahoma, 1986. As a volunteer, I distributed leaflets at air shows, sheep shows, and other community events.

Cleveland County Democratic Party Headquarters, Norman, Oklahoma 1986. As a volunteer, I participated in phone banking.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge,

the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

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

I have never practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1993 – 1994
United States Senate, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, District of Columbia 20510
Women's Law and Public Policy Fellow

1994 – 1997
United States Department of Justice
950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530
Special Assistant to the Deputy Attorney General (1996 – 1997)
Special Counsel, Office of Legislative Affairs (1994 – 1996)

1997 – 2000
Office of the United States Attorney, Central District of California
312 North Spring Street, Suite 1200
Los Angeles, California 90012
Assistant United States Attorney

2000 – 2002
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304
Senior Associate

2002 – 2008
McDermott Will & Emery LLP
275 Middlefield Road, Suite 100
Menlo Park, California 94025
Partner

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not mediated cases outside of my role as a judge.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Following my graduation from law school in 1993 until 1997, I worked on federal legislation and the implementation and enforcement of federal laws on a fellowship with United States Senate Judiciary Committee staff and as an attorney with the United States Department of Justice. From 1997 to 2000, I was a federal criminal prosecutor. From 2000 to 2008, I was in private practice as a civil litigator. From 2008 to 2010, I served as a Judge of the Superior Court of California. Since June 2010, I have served as a United States District Court Judge.

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

As an Assistant United States Attorney, I represented the United States in criminal trials and appeals involving bank robberies, narcotics trafficking, securities and tax fraud, and immigration. In the private sector, I specialized in intellectual property and business litigation. I represented individuals as well as big and small high technology and biotech companies, as both plaintiffs and defendants.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As an Assistant United States Attorney from 1997 through 2000, my practice was exclusively criminal prosecution, and I appeared in court frequently. While in private practice from 2000 through 2008, my practice was exclusively civil litigation, and I appeared in court occasionally.

i. Indicate the percentage of your practice in:

1. federal courts: 90%
2. state courts of record: 5%
3. other courts: 0%
4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 66%
2. criminal proceedings: 34%

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 seven cases as counsel (three as sole counsel and four as co-counsel).

i. What percentage of these trials were:
   1. jury: 43%
   2. non-jury: 57%

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.

Convolve Inc. v. Seagate Tech., LLC, 2008 WL 194293 (brief in opposition to certiorari), *cert. denied*, 552 U.S. 1230 (2008)

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. *Audio MPEG, Inc. v. Creative Labs, Inc.*, No. 05 cv 185 JBF/FBS (E.D. Va.)

Audio MPEG sued my client, Creative, for alleged patent infringement. I managed the litigation team for Creative and drafted a motion to dismiss on grounds that the foreign owners of the patents were not party to the case. The district court ruled that joinder of the patent owners was required. On subsequent reference to a magistrate judge for settlement, I prepared Creative's presentation and engaged in several days of negotiations. The parties settled, and the case was dismissed.

I was counsel in this case from 2005 to 2006. The District Judge was Hon. Jerome B. Friedman. The Magistrate Judge was Hon. F. Bradford Stillman.

Co-Counsel:
Terrence P. McMahon (retired)

Dana J. Finberg
O'Hagan Meyer
221 Caledonia Street
Sausalito, CA 94965
(415) 578-6902

Opposing Counsel:
Laura P. Masurovsky
Finnegan, Henderson, Farabow, Garrett & Dunner LLP
901 New York Avenue, Northwest
Washington, DC 20001
(202) 408-4043

2. *Creative Tech. Ltd. v. Apple Comput., Inc.*, No. C06-03218 SBA (N.D. Cal.)

I represented Creative Technology in this suit against Apple Computer in the Northern District of California (No. C06-03218 SBA). Creative claimed patent infringement in connection with the user interface of the iPod. Apple then sued Creative in three separate cases in the Eastern District of Texas (Nos. 9:06-CV-114, 9:06-CV-149, and 9:06-CV-150) and in one case in the Western District of Wisconsin (No. 06-C-0263-C). I was a managing counsel for these five district court cases and two related complaints before the United States International Trade Commission. Ultimately, the parties reached a settlement in which Apple agreed to pay Creative $100 million to license the relevant patent.

I was counsel in these cases in 2006. The District Judges were Hon. Saundra Brown Armstrong (N.D. Cal.), Hon. Barbara B. Crabb (W.D. Wis.), and Hon. Ron Clark (E.D. Tex.).

Co-Counsel:
Terrence P. McMahon (retired)

Mark Davis
Jenner & Block
1099 New York Avenue, Northwest, Suite 900
Washington, DC 20001
(202) 639-6057

Opposing Counsel:
Robert G. Krupka
Sonitor Technologies, Inc.
6897 Grenadier Boulevard, Unit 1004
Naples, FL 34108

(310) 770-5069

3. *Freedom Wave LLC v. Logitech, Inc.*, No. CV04-9862 JFW (MANx) (C.D. Cal.)

Freedom Wave sued my client, Logitech, for alleged patent infringement. I was primary counsel. At an early stage, I persuaded Freedom Wave to dismiss its complaint against Logitech's parent company. During the litigation, the U.S. Patent and Trademark Office agreed to reexamine the validity of the contested patent, triggering a second lawsuit against Logitech for alleged infringement of another patent. We settled the case.

I was counsel in this case from 2004 to 2005. The District Judge was Hon. John F. Walter.

Co-Counsel:
Peter Chen
Covington & Burling LLP
3000 El Camino Real
5 Palo Alto Square
Palo Alto, CA 94306
(650) 632-4700

Opposing Counsel:
Marc A. Fenster
Russ, August & Kabat
12424 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90025
(310) 826-7474

4. *Gart v. Micro Innovations Corp.*, No. CV 03-4320 CBM (Mcx) (C.D. Cal.)

Plaintiff Gart sued my client, Micro Innovations, for alleged patent infringement. As primary counsel, I drafted the claim construction briefs. I coordinated litigation strategy with co-defendants International Business Machines Corporation and Microsoft Corporation. The plaintiff opposed a *Markman* hearing on the theory that some claims had been construed previously in another case on which I had also worked. I successfully briefed and argued this issue. The parties then settled.

I was counsel in this case from 2003 to 2004. The District Judge was Hon. Consuelo B. Marshall.

Co-Counsel:
Robert Blanch
(formerly with McDermott Will & Emery LLP)
13th Judicial District Attorney's Office
515 West High Street
P.O. Box 637

Grants, NM 87020
(505) 285-4627

Opposing Counsel:
John B. Sganga, Jr.
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404

Counsel for Co-Defendants:
Robert W. Stone (for co-defendant International Business Machines)
Quinn Emanuel Urquhart & Sullivan, LLP
555 Twin Dolphin Drive, Fifth Floor
Redwood Shores, CA 94065
(650) 801-5000

James S. Blackburn (for co-defendant Microsoft)
Arnold & Porter Kaye Scholer LLP
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017
(213) 243-4063

5. *In re Seagate Tech., LLC*

I was a managing counsel for defendant Seagate Technology in this patent infringement case involving disk drive technology. I reviewed and revised pleadings in the case and drafted some summary judgment motions. After discovery, the plaintiffs dropped one of the three asserted patents and ten of the 25 alleged trade secrets. The district court also granted our summary judgment motion eliminating tort and punitive damages. *Convolve, Inc. v. Compaq Comput. Corp.*, No. OOCV5141 (GBD), 2006 U.S. Dist. LEXIS 13848 (S.D.N.Y. Mar. 29, 2006). In 2006, we successfully petitioned the Court of Appeals for the Federal Circuit for a writ of mandamus. The Federal Circuit's landmark *en banc* ruling overturned the 24-year-old standard for willful patent infringement by shifting the burden of proof regarding willful infringement from the defendant back to the patent owner. *In re Seagate Tech., LLC*, 497 F.3d 1360 (Fed. Cir. 2007).

In response to the Federal Circuit's decision, the plaintiffs filed a petition for a writ of certiorari to the U.S. Supreme Court. In our brief in opposition, we argued that the plaintiffs' petition was not ripe for review, that the petition presented questions that were not before the Federal Circuit, and that the petition was unavailing on the merits. In 2008, the U.S. Supreme Court denied the plaintiffs' petition for a writ of certiorari. *Convolve Inc. v. Seagate Tech., LLC*, 552 U.S. 1230 (2008).

I was counsel in this case from May 2003 to January 2008. The Federal Circuit opinion was *en banc*. The District Judge was Hon. George B. Daniels.

Co-Counsel:
Terrence P. McMahon (retired)

Stephen J. Akerley
Interdigital
25 Clouds Way
Hockessin, DE 19707
(302) 281-3670

Opposing Counsel:
Debra Brown Steinberg (retired)

Counsel for Co-Defendant Compaq:
Robert Goldman
(formerly Fish & Neave)
Ropes & Gray LLP
128 Primrose Way
Palo Alto, CA 94303
(650) 617-4000

6. *United States v. Johnson*, CR96-567-ABC (C.D. Cal. 1997)

I represented the United States in this eight-day criminal jury trial against four defendants charged with conspiracy to distribute cocaine. The jury convicted all four defendants. Defendant R. Johnson was sentenced to 168 months of imprisonment, defendant Cortez was sentenced to 121 months of imprisonment, defendant Whitfield was sentenced to 37 months of imprisonment, and defendant L. Johnson was sentenced to 27 months of imprisonment. Defendant R. Johnson appealed his conviction and sentence, which the Ninth Circuit affirmed. 176 F.3d 485 (9th Cir. 1999). Defendant Cortez appealed his conviction and sentence. The Ninth Circuit affirmed the conviction, but vacated the sentence, so that the court could make the proper advisement and inquiry regarding the defendant's prior conviction. 17 F. App'x 521 (9th Cir. 2001). Cortez was eventually resentenced to 121 months of imprisonment. My co-counsel and I jointly drafted the appellate briefs for both of the defendants' appeals.

I was counsel in this case from 1997 to 2000. The District Judge was Hon. Audrey B. Collins. The Court of Appeals panel for defendant R. Johnson was composed of Circuit Judges Nelson, Fernandez, and W. Fletcher. The Court of Appeals panel for defendant Cortez was composed of Circuit Judges O'Scannlain, Silverman, and Gould.

Co-Counsel:
Hon. Lee S. Arian
(formerly with U.S. Attorney's Office)
California Superior Court, County of Los Angeles
Chatsworth Courthouse

9425 Penfield Avenue
Chatsworth, CA 91311
(818) 407-2200

Defendants' Counsel:
Judith Rochlin (for defendant R. Johnson)
Law Office of Judith Rochlin
11209 National Boulevard, Suite 420
Los Angeles, CA 90064
(310) 473-6208

William S. Pitman (for defendant Cortez)
Law Offices of William S. Pitman
65 North Raymond Avenue, Suite 320
Pasadena, CA 91103
(213) 629-0272

Dean Gits (for defendant T. Johnson) (deceased)

Michael J. Treman (for defendant Whitfield) (deceased)

7. *United States v. Mitchell*, CR99-31-RAP (C.D. Cal. 1999)

I represented the United States in this four-day criminal jury trial regarding possession of counterfeit currency with intent to defraud. The defendant represented himself, raising special challenges for me as prosecutor and for the district court to ensure the defendant a full and fair trial. The jury found the defendant guilty. The defendant was sentenced to 21 months of imprisonment.

I was counsel in this case in 1999. The District Judge was Hon. Richard A. Paez. I was sole trial counsel. The defendant was *pro se*.

8. *United States v. Mohammad*, CR97-750-R (C.D. Cal. 1997)

I represented the United States in this four-day criminal jury trial against three defendants charged with possession of a methamphetamine precursor. Defendant Mohammad pleaded guilty prior to trial but appealed his sentence of 70 months of imprisonment, which the Ninth Circuit affirmed. 172 F.3d 60 (9th Cir. 1999). Defendant Mustafa pleaded guilty during trial, but appealed his conviction and sentence of 78 months of imprisonment. On appeal, I conceded that defendant Mustafa's case should be remanded for resentencing. The Ninth Circuit affirmed the conviction but vacated his sentence and remanded for him to obtain substitute sentencing counsel. 172 F.3d 60 (9th Cir. 1999). The district court sentenced defendant Mustafa to 78 months of imprisonment at resentencing. After trial, the jury found defendant Talliti guilty as charged, and he was sentenced to 76 months of imprisonment. Defendant Talliti appealed his conviction and sentence, which the Ninth Circuit affirmed. 221 F.3d 1349 (9th Cir. 2000). I was the

sole prosecutor at trial and on appeal. I wrote all the appellate briefs and argued before the Ninth Circuit in defendant Talliti's case.

I was counsel in this case from 1997 to 2000. The District Judge was Hon. Manuel L. Real. The Court of Appeals panel for defendants Mohammad and Mustafa was composed of Circuit Judges Brunetti, McKeown, and Magill. The Court of Appeals panel for defendant Talliti was composed of Circuit Judges Fernandez and Wardlaw and District Judge Weiner.

Defendants' Counsel:
Richard M. Steingard (for defendant Mohammad)
Law Offices of Richard M. Steingard
800 Wilshire Boulevard, Suite 1050
Los Angeles, CA 90017
(213) 260-9449

Alan R. Chappell (for defendant Mustafa)
Rich & Chappell
3648 Foothill Boulevard
Glendale, CA 91214
(818) 541-1149

Lawrence R. Young (for defendant Talliti)
4466 Kensington Road
Los Angeles, CA 90066
No phone number available

9. *United States v. Stapleton*, SA CR 99-47(A)-GLT (C.D. Cal.)

I represented the United States in a telemarketing fraud case against seven defendants that resulted in a $5 million loss to victims. Three defendants pleaded guilty prior to trial. After a 14-day criminal jury trial, the jury found the remaining four defendants guilty as charged. Defendant Stapleton was sentenced to 46 months of imprisonment, defendant Klatter was sentenced to 51 months of imprisonment, defendant Long was sentenced to 37 months of imprisonment, and defendant Perkins was sentenced to 57 months of imprisonment. I drafted the jury instruction for this trial, which was adopted as Ninth Circuit Model Criminal Jury Instruction 8.101A (Scheme to Defraud—Vicarious Liability). Defendant Stapleton appealed his conviction, which the Ninth Circuit affirmed. 293 F.3d 1111 (9th Cir. 2002). My co-counsel drafted the appellate brief.

I was counsel in this case in 2000. The District Judge was Hon. Gary L. Taylor.

Co-Counsel:
Ellyn M. Lindsay
9854 National Boulevard, #270
Los Angeles, CA 90034

(310) 614-1284

Defendants' Counsel:
William G. Morrissey (for defendant Stapleton)
Attorney at Law
3002 Highland Drive
Russellville, AR 72802
(714) 454-6074

Michael Meza (for defendant Klatter)
P.O. Box 3652
Seal Beach, CA 90740
(714) 564-2501

Donald L. Herzstein (for defendant Long)
Donald L. Herzstein Law Office
3553 Atlantic Avenue, #1245
Long Beach, CA 90807
(562) 706-5899

Randolph K. Driggs (for defendant Perkins)
Law Office of Randolph K. Driggs
551 South Westford Street
Anaheim, CA 92807
(714) 366-6830

10. *United States v. Zapata*, CR89-107-TJH (C.D. Cal. 1998)

I represented the United States in this one-day criminal bench trial for conspiracy to distribute and possess cocaine. This case was particularly challenging because the evidence was nearly a decade old. The defendant had fled the cocaine bust by seizing the car of an elderly man and had successfully eluded authorities for nine years. The court convicted the defendant, and the defendant was sentenced to 168 months of imprisonment. The defendant appealed his sentence. We conceded on appeal that the case should be remanded for resentencing. The Ninth Circuit affirmed in part, vacated in part, and remanded for resentencing. 185 F.3d 872 (9th Cir. 1999). The district court sentenced the defendant to 126 months of imprisonment at resentencing. My co-counsel and I jointly drafted the appellate brief.

I was counsel in this case from 1998 to 1999. The District Judge was Hon. Terry J. Hatter Jr. The Court of Appeals panel was composed of Circuit Judges O'Scannlain, Rymer, and Silverman.

Co-Counsel:
Pamela Johnston
(formerly with U.S. Attorney's Office)

Foley & Lardner LLP
555 South Flower Street, Suite 3500
Los Angeles, CA 90071
(213) 972-4632

Defendant's Counsel:
Joseph F. Walsh
Solo Practitioner
205 South Broadway, Suite 606
Los Angeles, CA 90012
(213) 627-1793

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a Fellow with the United States Senate Judiciary Committee staff, I identified and interviewed hearing witnesses, worked on legislation, and researched nominees referred to the Committee. As an attorney with the United States Department of Justice, I advised and briefed the Attorney General and the Deputy Attorney General. As a federal prosecutor, I worked with federal law enforcement agents in investigating criminal activity. In the private sector, I advised clients on a variety of business and intellectual property matters that did not involve litigation.

As a California Superior Court Judge, I worked with defendants in Drug Court and Domestic Violence Court. I also presided over special criminal court sessions for homeless veterans at the 2009 South Bay Stand Down and 2008 East Bay Stand Down. As a U.S. District Judge, I have presided successfully over settlement conferences.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any semester or quarter-long courses. I have taught sessions at the Stanford Law School Trial Advocacy Workshop, which are listed above in response to Question 12d.

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

for any financial or business interest.

None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    I have no 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).

    When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My husband is an Associate Justice on the Supreme Court of California. I currently recuse myself, and would continue to recuse myself, in any case in which he was involved. My husband teaches at Stanford Law School and has taught at Harvard Law School and New York University Law School. My husband serves on the Harvard Corporation and the William and Flora Hewlett Foundation Board. For many years, I served on the Board of Overseers Visiting Committee for Harvard Law School. As a result of these relationships, I recuse myself in any case involving these entities and would continue to do so. My brother-in-law is the Chief Data Officer at Hewlett Packard Enterprise, so I recuse myself from cases involving his company. I recuse myself from any cases involving three attorneys in the area with whom I have a close relationship. I would recuse myself from any case involving companies that manage the diversified mutual funds in which my husband and I invest. Should any other actual or potential conflicts of interest arise, I will adhere to the Code of Conduct

for United States Judges and other applicable authority regarding their resolution.

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

If confirmed, I will continue to abide by the Code of Conduct for United States Judges and other applicable authority in resolving any conflicts of interest.

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 consider pro bono activities and mentoring to be an important part of my commitment to the legal profession. Since law school, I have participated in pro bono, mentoring, and community activities in Massachusetts, Washington, D.C., and California. For example, as a law student, I represented Guatemalan and El Salvadoran asylum seekers through Cambridge and Somerville Legal Services. I also represented low income tenants facing eviction before local housing authorities through Harvard Law School's Tenant Advocacy Project. In Los Angeles I participated in the Korean American Bar Association of Southern California's Law Days where we provided free legal advice in Koreatown. And I have organized and volunteered at citizenship drives providing assistance to lawful permanent residents completing naturalization applications in Washington, D.C., and Los Angeles.

As a judge, I volunteered at criminal courts for homeless veterans at the 2008 East Bay Stand Down and 2009 South Bay Stand Down. I also trained to volunteer at Santa Clara County Superior Court's Outreach Court at a homeless shelter. Further, I have volunteered as a judge in numerous elementary, high school, and law school moot court and mock trial competitions.

To support the court's continuing community outreach efforts, I have hosted elementary, middle, high, and vocational school as well as college and law school students; Cub Scout and Boy Scout Troops; Boys and Girls Clubs; high school teachers; visiting foreign attorneys and judges; and English as a Second Language senior citizens in my courtroom to conduct mock trials, observe court, or discuss the court system. In addition, I have spoken on a panel at Joseph George Middle School in East San Jose and judged the 2009 Organization of Chinese Americans, Inc. Speak and Lead with Pride high school speech contest. Informally and through formal programs, including the Asian Pacific American Leadership Institute and various bar associations, I also have mentored high school, college, and law school students as well as lawyers and judges.

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.

Senator Dianne Feinstein has established a bipartisan Judicial Advisory Committee for screening and recommending candidates for the federal judiciary throughout California. I completed Senator Feinstein's application for nomination to the Ninth Circuit and submitted my application to the State Chair of Senator Feinstein's Judicial Advisory Committee on January 19, 2021. I updated my application on March 16, 2021, and April 13, 2021.

Senator Alex Padilla has established a bipartisan Judicial Evaluation Commission for screening and recommending candidates for the federal judiciary throughout California. On February 16, 2021, I completed Senator Padilla's application for nomination to the Ninth Circuit and submitted my application to the Statewide Chair of Senator Padilla's Judicial Evaluation Commission. I updated my application on April 15, 2021.

On May 28, 2021, an attorney from the White House Counsel's Office contacted me to confirm my interest in being considered for an opening on the Ninth Circuit. On June 7, 2021, an attorney from the White House Counsel's Office notified me that I would be considered for an opening on the Ninth Circuit. Since June 7, 2021, I have been in contact with attorneys from the Office of Legal Policy at the U.S. Department of Justice. On July 2, 2021, I was interviewed by Senator Padilla. On September 8, 2021, the President announced his intent to nominate me.

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

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jane Marie Beckering
   Jane Marie Buchanan

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

   United States District Court Judge for the Western District of Michigan

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.

   Michigan Court of Appeals
   State of Michigan Office Building
   350 Ottawa Avenue, Northwest
   Grand Rapids, Michigan 49503

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

   1965; Grand Rapids, Michigan

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.

   1987 – 1990: University of Wisconsin Law School; J.D. (with honors), 1990

   1983 – 1987: University of Michigan; B.A. (with distinction), 1987

   Winter Term 1986: Universidad de Madrid

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 2007 – present
   Michigan Court of Appeals
   State of Michigan Office Building

350 Ottawa Avenue, Northwest
Grand Rapids, Michigan 49503
Appellate Judge
Chief Judge Pro Tempore (2018 – present)

2000 – 2007
Buchanan & Beckering, PLLC
171 Monroe Avenue, Northwest, Suite 750
Grand Rapids, Michigan 49503
Partner/Member

1995 – 2000
Buchanan, Silver & Beckering, PLLC
300 Ottawa Avenue, Northwest, Suite 800
Grand Rapids, Michigan 49503
Partner/Member

1992 – 1995, Summer 1988
Buchanan & Bos, PC
300 Ottawa Avenue, Northwest, Suite 800
Grand Rapids, Michigan 40503
Associate

1990 – 1992, Summer 1989
McDermott, Will & Emery
444 West Lake Street
Chicago, Illinois 60606
Associate

Fall 1989 – Spring 1990
Foley & Lardner, LLP
150 East Gilman Street, Suite 5000
Madison, Wisconsin 53703
Law Clerk

Other Affiliations (Uncompensated)

2020 – present
Grand Rapids Bar Association
161 Ottawa Avenue, Northwest, Suite 203-B
Grand Rapids, Michigan 49503
President-Elect (2021 – present)
Vice-President (2020 – 2021)

2005 – 2009
Hillman Advocacy Program
(Jointly sponsored by the U.S. District Court for the Western District of Michigan and the Western District of Michigan Chapter of the Federal Bar Association)

110 Michigan Street, Northwest
Grand Rapids, Michigan 49503
Steering Committee Chairperson (2007 – 2009)
Steering Committee Vice-Chairperson (2005 – 2007)

July 2006 – September 2006
Michigan Association for Justice
325 Walnut Street
Lansing, Michigan 48933
Treasurer

2004 – 2007
Grand Rapids Bar Association
161 Ottawa Avenue, Northwest, Suite 203-B
Grand Rapids, Michigan 49503
Trustee

2002 – 2006
Migrant Legal Aid
(f/k/a/ Michigan Migrant Legal Assistance Project)
1104 Fuller Avenue, Northeast
Grand Rapids, Michigan 49503
Secretary/Treasurer

1994 – 1995
Grand Rapids Bar Association
161 Ottawa Ave, Northwest, Suite 203-B
Grand Rapids, Michigan 49503
Secretary, Young Lawyers' Section

1987 – 1989
American Association for Justice
777 6th Street, Northwest, Suite 200
Washington, District of Columbia 20001
President, University of Wisconsin Law School Student Chapter (1988 –1989)
Secretary, University of Wisconsin Law School Student Chapter (1987 – 1988)

1987 – 1989
Wisconsin Association for Justice
14 West Mifflin Street, Suite 207
Madison, Wisconsin 53703
President, University of Wisconsin Law School Student Chapter (1988 – 1989)
Secretary, University of Wisconsin Law School Student Chapter (1987 – 1988)

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I did not serve in the military. I was not required to register for the selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic o professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Lifetime Judicial Achievement Award, American Board of Trial Advocates (2018)

Fellow, Michigan State Bar Foundation (2014 – present)

Fellow, Justice Foundation of West Michigan (2007 – present)

Listed in *The Best Lawyers in America*, Personal Injury Litigation (2003 – 2008)

Named in *Michigan Super Lawyers*
Listed among "*Top 100 Lawyers*" (2006 – 2008) (10 women named)
Listed among "*Top 50 Female Lawyers*" (2006 – 2008)

AV-rating, Martindale-Hubbell (2002 – 2007)

Recognized by Michigan Migrant Legal Assistance Project for seven years of service on the Board of Directors (2006)

Degree from the University of Wisconsin Law School conferred with honors (1990)

American Jurisprudence Award, Creditors' & Debtors' Rights (1990) (Book Award)

Dean's List, University of Wisconsin Law School (Fall 1987 – 1988, Fall 1989 – 1990)

Degree from the University of Michigan conferred with distinction (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.

Advanced Science & Technology Adjudication Resource Center (ASTAR)
Judge Participant, March (2010 – 2012)

American Association for Justice
President, University of Wisconsin Law School Student Chapter (1988 – 1989)
Secretary, University of Wisconsin Law School Student Chapter (1987 – 1988)
Member (1987 – 2008)

American Bar Association, Member (1992 – 2014, 2017 – present)

American Inns of Court, Gerald R. Ford Chapter
Executive Committee (1997 – 1998)

Reporting Committee (1997 – 1998)
Nomination Committee (1996 – 1998)
Member (circa 1995 – 1998)

American Judicature Society, Member (approximately 1999)
Chicago Bar Association (1990 – 1992)

Federal Bar Association, Member (various years including 2021)

Grand Rapids Bar Association
President-Elect (July 2021 – present)
Vice-President (July 2020 – June 2021)
Chairperson, Nominations Committee (2021)
Awards Committee (2021)
Trustee (2004 – 2007)
Law Day Committee (1992 – 1995, 2007)
Membership Committee (2004 – 2007)
Subcommittee Chair, Recruitment and Retention (2004 – 2007)
Litigation Section (1999 – 2007)
Co-Chair, Social Host Committee (2006)
Liberty Bell Award Committee (2000, 2006)
Legal Assistance Center Committee (1999 – 2000)
Pro Bono Committee (approximately 1997 – 1999)
Young Lawyers Section (1992 – 1996)
Secretary, Young Lawyers Section (1994 – 1995)
Law Day Committee (1992 – 1995)
Judicial Review Committee (1994)
Luncheon Series Planning Committee (1994)
Child Care Task Force (1994)
Sections Development Committee (1993 – 1994)
Young Lawyers Section Citizens Law School Committee (1993 – 1995)
Young Lawyers Section Horn of Plenty Committee (1992 – 1994)
Grand Rapids Bar Association member (1992 – present)

Hillman Advocacy Program
Steering Committee (2001 – 2002, 2004 – present)
Core Advisory Committee (approximately 2005 – present)
Steering Committee Selection Subcommittee (2005 – present)
Faculty Selection Subcommittee (2005 – present)
Faculty Demonstrators Selection Subcommittee (2005 – present)
Faculty Member (2003 – 2005, substitute instructor 2015 – 2017, 2020)
Workshop Volunteer Witness (2018)
Faculty Demonstrator, Closing Argument (2003, 2012)
Chairperson (2007 – 2009)
Vice-Chairperson (2005 – 2007)
Chairperson, Fundraising Subcommittee (approximately 2005 – 2007)

Illinois Bar Association, Member (1990 – 2007)

International Society of Primerus Law Firms, Member (1993 – 2007)

Justice Foundation of West Michigan, Fellow (2007 – present)

Merit Selection Panel, United States District Court for the Western District of Michigan
Magistrate Judge Selection Panel, Member (2013 –2014)

Merit Selection Panel, United States District Court for the Western District of Michigan
Magistrate Judge Evaluations Panel, Chairperson (Spring 2008)

Michigan Association for Justice
- Executive Board (1999 – 2007)
- Treasurer (July 2006 – September 2006)
- Chairperson, Medical Malpractice Section (2005 – 2006)
- MTLA Listserv Committee (2004 – 2006)
- Legislative Rapid Response Committee (2004 – 2006)
- Co-Chair, Education Committee (2003 – 2006)
- Justice PAC (2001 – 2006)
- Education Committee (2001 – 2006)
- Judicial Qualifications Committee (2003)
- Membership Committee (1999 – 2002)
- Special Forces Member, MTLA Team 2000 (1999 – 2001)
- Mentor Program (1999)
- Michigan Association of Justice member (1993 – 2015)

Michigan Bar Association, Member (1992 – present)

Michigan Judges Association
- Member (2007 – 2014, 2020 – present)
- Executive Board, Court of Appeals Liaison (2010 – 2012)

Michigan State Bar Foundation, Fellow (2014 – present)

Michigan Supreme Court Committee on Model Civil Jury Instructions, Member (2009 – 2019)

Michigan Migrant Legal Assistance Project (Migrant Legal Aid)
- Board Member (1999 – 2006)
- Secretary/Treasurer (2002 – 2006)
- Personnel Committee, Chairperson (1999 – 2006)
- Planning Committee (2004 – 2006)

Wisconsin Association for Justice
- President, University of Wisconsin Law School Student Chapter (1988 – 1989)
- Secretary, University of Wisconsin Law School Student Chapter (1987 – 1988)
- Member (1987 – 1990)

Wisconsin Bar Association, Member (1990 – 2007)

Women Lawyers Association of Michigan, Member (1992 – 2007, then various years including 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.

Illinois, 1990
Wisconsin, 1990
Michigan, 1992

There have been no lapses in my membership in the Michigan bar. I had no lapses in my memberships in the Illinois and Wisconsin bars before I became a judge in 2007. After taking the bench, I decided not to renew my memberships in the Illinois and Wisconsin bars and went on inactive status.

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 District Court for the Northern District of Illinois, 1990
United States District Court for the Western District of Michigan, 1992
United States District Court for the Western District of Wisconsin, 1990

There have been no lapses in membership in the Western District of Michigan. After taking the bench, I went on inactive status in Illinois and Wisconsin.

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.

Center for Patient Advocacy, President's Club Member (1999 – 2000)

Delta Gamma Fraternity
Alumnae Association Member (1990 – present)
Local Chapter Bylaws Chairperson (circa 1996)

Institute of Continuing Legal Education
Co-Consulting Editor, *Michigan Civil Procedure* (2012 – present)

Meijer Frederick Gardens & Sculpture Park, Member (approximately 2010, 2015, and various other years)

University of Michigan Alumni Association, Member (various years, including 2018 – present)

Urban Institute for Contemporary Arts, Member (2017 – 2018)

Women's Progressive Alliance, Member (2004 – 2008)

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 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 and practices other than my college and alumna membership in the all-female fraternity, Delta Gamma. Other than admitting only women to the organization, it otherwise does not discriminate on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Michigan Courts 101, Institute of Continuing Legal Education. I authored Sections I and V of the written materials accompanying on-demand video presentation. First published in 2017, updated in 2021. Copy supplied.

Back-cover review quotation for the book, "*The Articulate Witness, An Illustrated Guide to Testifying Confidently Under Oath*," by Brian K. Johnson and Marsha Hunter (2015). Copy supplied.

Michigan Civil Procedure, Second Edition, Institute of Continuing Legal Education. Co-Editor from 2012 to Present (regularly updated). Co-Author of Chapter 24, Judgments. Copy of Chapter 24 supplied.

Making Final Orders Final, 40 Mich. Fam. L.J., No. 7 (Aug./Sept. 2010). Copy supplied.

Don't blame silly labels on lawsuits, letter to the editor, Grand Rapids Press, Jan. 31, 2000. Copy supplied.

One-branch government, letter to the editor, Detroit Free Press, Oct. 5, 1999. Copy supplied.

Finding Real Value in "Loss of Service" Damages, 33 Mich. Ass'n for Just. Q., No. 2, 7 (Spring 1999). 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 helped prepare an updated Mission Statement for the Michigan Migrant Legal Assistance Project in approximately 2001 during an executive committee retreat. The organization is now called Migrant Legal Aid. Mission statement 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.

In 2021 I helped produce a written communication titled *The Past and Future of the Court of Claims* for dissemination to members of the Michigan Legislature in association with suggested reformation of the Court of Claims legislation, as the Court of Claims is currently housed within the Michigan Court of Appeals. Copy supplied.

In 2018, I endorsed Curt Benson as a candidate for the Kent County Circuit Court. Copy of the campaign's #bensonforthebench Instagram post supplied.

From 2009 to 2019 I served on the Michigan Supreme Court Committee on Model Civil Jury Instructions. Communications regarding revisions to civil jury instructions 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.

To my recollection and through a review of my calendars, old curricula vitae, stored materials, and searches of publicly available databases, I have found the following responsive materials:

June 2, 2021: Guest Speaker, "Inaugural Bench and Bar Question and Answer Session," Grand Rapids Bar Association Young Lawyers' Section virtual event, Grand Rapids, Michigan. Notes supplied.

April 20, 2021: Presenter of Liberty Bell Award to Greater Grand Rapids NAACP, Grand Rapids, Michigan. Notes supplied.

November 19, 2020: Presenter, New Lawyer Admissions Ceremony, Grand Rapids Bar Association, virtual event, Grand Rapids, Michigan. My presentation was to welcome new lawyers on behalf of the Court of Appeals. I have no notes, transcript, or recording. The address for the Grand Rapids Bar Association is 161 Ottawa Avenue, Northwest, Grand Rapids, Michigan 49503.

September 24, 2020: Panelist, "Judicial Jamboree– A Discussion About Remote Justice," Appellate Practice Section of the State Bar of Michigan, statewide virtual event. Recording available at https://youtu.be/k_sFs6i29cA.

September 17, 2020: Speaker, Inauguration Ceremony for State Bar of Michigan officers for 2020 to 2021, virtual event, statewide. Recording available at https://www.youtube.com/watch?v=acqvqG5k8W8 (my remarks can be found at around 37:11 to 38:18).

May 8, 2019: Panel judge and presenter, "3R's Debate," Grand Rapids Bar Association, Grand Rapids, Michigan. I served as a mock debate judge and gave remarks to University Preparatory Academy 9th graders during an oral advocacy workshop. I have no notes, transcript, or recording. The address for the Grand Rapids Bar Association is 161 Ottawa Avenue, Northwest, Grand Rapids, Michigan 49503.

April 1, 2019: Moot court judge, 94th Henry M. Cambell Moot Court Competition, University of Michigan Law School, Ann Arbor, Michigan. I served as a moot court judge and gave remarks regarding appellate oral advocacy strategies to the competitors who appeared before me. I have no notes, transcript, or recording, but press coverage is supplied.

March 29, 2019: Plenary panel speaker, "Technology and the Record," Michigan Appellate Bench Bar Conference, State Bar of Michigan, Plymouth, Michigan. Transcript supplied.

December 7, 2018: Speaker, acceptance remarks upon receiving Lifetime Judicial Achievement Award, American Board of Trial Advocates annual dinner, Detroit, Michigan. Notes supplied.

November 15, 2018: Speaker, "View from the Appellate Bench, Top Ten Tips for Making Effective Oral Arguments," Family Law Institute, 17th Annual Conference, Institute of Continuing Legal Education, Plymouth, Michigan. Written materials supplied.

October 26, 2018: Panel speaker, "Appellate Advocacy," State Appellate Defender Office (SADO)/ Michigan Appellate Assigned Counsel System (MAACS), Fall training program, Lansing, Michigan. The panel, comprised of judges and court staff, was on appellate advocacy tips. I have no notes, transcript, or recording. The address for SADO is 200 North Washington Square, Lansing, Michigan 48933.

October 18, 2018: Panelist and breakout session facilitator, "Promoting Professionalism in the 21st Century," State Bar of Michigan, Lansing, Michigan. This day-long seminar focused on civility and integrity in the practice of law. I have no notes, transcript, or recording, but press coverage supplied. The address for the State Bar of Michigan is 306 Townsend Street, Lansing, Michigan 48933.

September 27, 2018: Panelist, "The Dos and Don'ts of Oral Advocacy," Appellate Practice Section of the State Bar of Michigan, Grand Rapids, Michigan. The panel was on oral advocacy tips and techniques. I have no notes, transcript, or recording. The address for the State Bar of Michigan is 306 Townsend Street, Lansing, Michigan 48933.

June 8, 2018: Presenter, New Lawyer Admissions Ceremony, Grand Rapids Bar Association. I gave welcoming remarks on behalf of the Michigan Court of Appeals. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Grand Rapids Bar Association is 161 Ottawa Avenue, Northwest, Grand Rapids, Michigan 49503.

May 30, 2018: Speaker, "Appellate Practice in Post Judgment Custody, Parenting Time and Child Support Matters," Institute of Continuing Legal Education, Ann Arbor, Michigan. Notes supplied.

May 10, 2018: Panelist, United States District Court for the Western District of Michigan's Leadership Development Program, Grand Rapids, Michigan. Notes supplied.

April 27, 2018: Speaker, "Introduction to the Michigan Court of Appeals," Brownie Troop visit to Michigan Court of Appeals, Grand Rapids, Michigan. Notes supplied.

July 24, 2017: Presenter, "Michigan Courts 101," Institute of Continuing Legal Education, Video On-Demand Seminar, Ann Arbor, Michigan. Copy of written materials and video supplied.

April 28, 2017: Panelist, "Winning with the Court," Women Lawyers Association of Michigan, Lansing, Michigan. The panel was on practice advice and work-life balance. I have no notes, transcript, recording. The address for the Women Lawyers Association of Michigan is 120 North Washington Square, Suite 110A, Lansing, Michigan 48933.

November 15, 2016: Presenter, New Lawyer Admissions Ceremony, Grand Rapids Bar Association, Grand Rapids, Michigan. Notes supplied.

May 19, 2016: Presenter, "Justice Scholars," program for grade school students hosted by the United States Attorney's Office for the Western District of Michigan, Grand Rapids, Michigan. I discussed oral advocacy and the Michigan Court of Appeals. I have no notes, transcript, or recording, but press coverage is supplied. The address for the United States Attorney's Office is 330 Ionia Avenue, Northwest, Suite 501, Grand Rapids, Michigan 49503.

April 22, 2016: Breakout session judicial representative, "Unlocking Lockridge: The Key to Fact-Finding at Sentencing," Appellate Bench Bar Conference, State Bar of Michigan, Plymouth, Michigan. I was a judicial panel member for a breakout session about the impacts of the *Lockridge* case on fact-finding at sentencing and how the decision affects the scoring of the prior record variables and offense variables, as well as the practical responses to the decision. I have no notes, transcript, or recording. The address for the Michigan Bar Association is 306 Townsend Street, Lansing, Michigan 48933.

April 22, 2016: Breakout session judicial representative, "Mitigation and Litigation in Juvenile Lifer Resentencing Hearings," Appellate Bench Bar Conference, State Bar of Michigan, Plymouth, Michigan. I was a judicial panel member for a breakout session about the decision in *Miller v Alabama* and the Michigan legislative response that altered the manner in which sentencings for juveniles who commit murder in Michigan are conducted. I have no notes, transcript, or recording. The address for the Michigan Bar Association is 306 Townsend Street, Lansing, Michigan 48933.

April 22, 2016: Plenary panel member, "Shaping the Law: Tools of Advocacy and Decision Making," Appellate Bench Bar Conference, State Bar of Michigan, Plymouth, Michigan. I was a member of a "mega panel" of Court of Appeals judges, and we discussed ways in which both the bench and bar shape the law, including topics such as approaches to precedent, development of the common law, publication of decisions, statutory interpretation, and judicial restraint. I have no notes, transcript, or recording. The address for the Michigan Bar Association is 306 Townsend Street, Lansing, Michigan 48933.

April 16, 2016: Presenter of Champion of Justice Award to Jules Olsman, Michigan Association for Justice annual meeting, Detroit, Michigan. Notes supplied.

November 13, 2015: Presenter, New Attorney Admissions Ceremony, Grand Rapids Bar Association, Grand Rapids, Michigan. I have no notes, transcript, or recording, but my remarks would have been substantially similar to the admissions ceremony on November 19, 2013, for which notes have been supplied. The address for the Grand Rapids Bar Association is 161 Ottawa Avenue, Northwest, Grand Rapids, Michigan 49503.

April 23, 2015: Guest Speaker, "Recommendations for Successfully Navigating the Appellate Courts," Garan Lucow Miller annual spring breakfast seminar, Grand Rapids, Michigan. Notes supplied.

February 26, 2015: Mentor Jet participant, Western Michigan University Thomas M. Cooley Law School, Grand Rapids, Michigan. I answered questions from the student participants. I have no notes, transcript, or recording. The address for Thomas M. Cooley Law School is 111 Commerce Avenue, Southwest, Grand Rapids, Michigan 49503.

April 30, 2014: Participant and guest, Western District of Michigan Chapter of the Federal Bar Association "Book Club" event. The other participants and I discussed Justice Sotomayor's memoir, *My Beloved World.* I have no notes, transcript, or recording. The address for the Western District of Michigan Chapter of the Federal Bar Association is P.O. Box 2303, Grand Rapids, Michigan 49501.

February 27, 2014: Mentor Jet participant, Western Michigan University Thomas M. Cooley Law School, Grand Rapids, Michigan. I have no notes, transcript, or recording. The address for Thomas M. Cooley Law School is 111 Commerce Avenue, Southwest, Grand Rapids, Michigan 49503.

November 19, 2013: Presenter, New Lawyer Admissions Ceremony, Grand Rapids Bar Association, Grand Rapids, Michigan. Notes supplied.

October 10, 2013: Presenter, "A Tour of the Michigan Court of Appeals," NALS, the association for legal professions, Grand Rapids, Michigan. Notes supplied.

March 27, 2013: Presenter, Career Day, Forest Hills Central Middle School, Grand Rapids, Michigan. Notes supplied.

September 20, 2012: Speaker, "How to File an Appealing Appeal," Michigan Association of Municipal Attorneys, Lansing, Michigan. Presentation supplied.

April 27, 2012: Judicial panelist, Women Lawyers Association of Michigan annual meeting, Grand Rapids, Michigan. Notes supplied.

March 25, 2012: Keynote speaker, East Grand Rapids High School Academic Honors Ceremony, Grand Rapids, Michigan. Notes supplied.

January 20, 2012: Faculty Demonstrator, Closing Argument in *Flinders Aluminum Fabrication Corporation v. Mismo Fire Insurance Company*, Hillman Advocacy Program, Grand Rapids, Michigan. I have no notes, transcript, or recording. The current address for the Hillman Program is C/O Andrea Bernard, Warner Norcross & Judd, 150 Ottawa Avenue, Northwest, Unit 150, Grand Rapids, Michigan 49503.

May 13, 2011: Guest speaker, "Court of Appeals – Update," 66th Annual Rapid Fire Seminar, Michigan Association for Justice, Dearborn, Michigan. Notes supplied.

February 17, 2011: Panelist, "Practice Pointers from the Bench: Professionalism & Civility," New Attorney Orientation Program, Grand Rapids Bar Association, Grand Rapids, Michigan. Notes supplied.

October 9, 2010: Guest speaker for Western Michigan University Thomas M. Cooley Law School weekend students, Grand Rapids, Michigan. The discussion was on advocacy and the practice of law. I have no transcript, recording, or notes. The address for Thomas M. Cooley Law School is 111 Commerce Avenue, Southwest, Grand Rapids, Michigan 49503.

September 30, 2010: Panelist, "Post-Judgment Procedures and the Appeal," Appellate Practice Section, State Bar of Michigan, Grand Rapids, Michigan. Written materials supplied.

June 9, 2010: Breakout session judicial representative, "Mitigation and Litigation in Juvenile Lifer Resentencing Hearings," Appellate Bench Bar Conference, State Bar of Michigan, Plymouth, Michigan. I was a judicial panel member for a breakout session about the decision in *Miller v Alabama* and the Michigan legislative response that altered the manner in which sentencings for juveniles who commit murder in Michigan are conducted. I have no notes, transcript, or recording, but conference summary report supplied. The address for the Michigan Bar Association is 306 Townsend Street, Lansing, Michigan 48933.

June 9, 2010: Plenary panel member, "The Case for Civility and Collegiality: Fostering Integrity and Respect for the System," Appellate Bench Bar Conference, State Bar of Michigan, Plymouth, Michigan. I was a member of a plenary panel on the topic of civility and collegiality, including what it means, its impact on the public's perception of justice, how to promote collegiality, and whether there should be civility standards. I have no notes, transcript, or recording, but conference summary report supplied. The address for the Michigan Bar Association is 306 Townsend Street, Lansing, Michigan 48933

May 24, 2010: Panelist, "Appellate Practice," Gerald R. Ford American Inns of Court, Grand Rapids, Michigan. I have no notes, transcript, or recording. The local chapter is no longer active.

April 16, 2010: Guest lecturer, "Successful Negotiation and Communication Strategies from a Legal Perspective," Business 4750 Strategic Business Solutions Class, Western Michigan University, Kalamazoo, Michigan. I have no notes, transcript, or recording. I spoke about how lawyers negotiate. The address for Western Michigan University is 1903 West Michigan Avenue, Kalamazoo, Michigan 49008.

February 25, 2010: Guest speaker, "Practice Pointers from the Bench: Professionalism & Civility," New Attorney Orientation Program, Grand Rapids Bar Association, Grand Rapids, Michigan. I spoke about civility and advocacy. I have no notes, transcript, or recording. The address for the Grand Rapids Bar Association is 161 Ottawa Avenue, Northwest, Grand Rapids, Michigan 49503.

February 4, 2010: Panelist, Trial Institute, Michigan Association for Justice, Southfield, Michigan. The panel, comprised of judges and judicial faculty, spoke about best practices in court. I have no notes, transcript, or recording. The address for the Michigan Association of Justice is 325 South Walnut Street, Lansing, Michigan 48933.

November 25, 2009: Mock trial judge, "We the People," Center for Civic Education, Third Congressional District High School Competition, Kent Intermediate School District, Grand Rapids, Michigan. I served as a judge and gave remarks to students and their parents about advocacy. I have no notes, transcript, or recording. The address for the Kent Intermediate School District is 2930 Knapp Street, Northeast, Grand Rapids, Michigan 49525.

November 12, 2009: Speaker, "View from the Appellate Bench: Making Final Orders Final II," Eighth Annual Family Law Institute, Institute of Continuing Legal Education, Plymouth, Michigan. Written materials supplied.

January 21, 2009: Presenter, opening remarks as Chairperson at 28th Annual Hillman Advocacy Program, Grand Rapids, Michigan. This is a 2 1/2-day trial skills training program sponsored by the United States District Court for the Western District of Michigan and the Western District of Michigan Chapter of the Federal Bar Association. Notes supplied.

December 11, 2008: Panelist, "Balancing Work and Professional Life," New Attorney Orientation Program, Grand Rapids Bar Association, Grand Rapids, Michigan. Notes supplied.

November 20, 2008: Speaker, "View from the Appellate Bench – Advice to Court Practitioners: Making Final Orders Final," Seventh Annual Family Law Institute, Institute of Continuing Legal Education, Plymouth, Michigan. Written materials supplied.

October 8, 2008: Guest speaker, "The Michigan Judicial System, Our Third Branch of Government," Thornapple Elementary School 4th Grade Class, Grand Rapids, Michigan. Notes supplied.

July 28, 2008: Guest speaker, "Reflections upon Transitioning from Practitioner to Judge, Tips for Lawyers," Brown Bag luncheon for Litigation Practice Group of Rhoades, Mckee, PC, Grand Rapids, Michigan. Notes supplied.

July 13 – July 18, 2008: Faculty instructor, National Institute of Trial Advocacy (NITA), Building Trial Skills, National Session, NITA Education Center, Louisville, Colorado. I have no notes, transcript, or recording. The address for NITA is 325 West South Boulder Road, Suite 1, Louisville, Colorado 80027.

June 24, 2008: Guest Speaker, Brown Bag Lunch Series for Interns at U.S. Attorney's Office, Western District of Michigan, Grand Rapids, Michigan. I discussed trial and appellate practice. I have no notes, transcript, or recording. The address for the U.S. Attorney's Office is 330 Ionia Avenue, Northwest, Suite 501, Grand Rapids, Michigan 49503.

May 28, 2008: Presenter, New Lawyer Admissions Ceremony, jointly sponsored by the United States District Court, Western District of Michigan and the Grand Rapids Bar Association, Grand Rapids, Michigan. Notes supplied.

May 8, 2008: Keynote speaker, Law Day Luncheon, "The Rule of Law," NALS of West Michigan, Grand Rapids, Michigan. Notes supplied.

May 1, 2008: Keynote speaker, 50th Celebration of Law Day, "The Rule of Law," Muskegon County Bar Association, Muskegon, Michigan. Notes and press coverage supplied.

April 24, 2008: Presenter, Bring Your Child to Work Luncheon, Women Lawyers Association of Michigan, Grand Rapids, Michigan. I have no notes, transcript, recording. The address for the Women Lawyers Association of Michigan is 120 North Washington Square, Suite 110A, Lansing, Michigan 48933.

March 12, 2008: Guest speaker, "Box Lunch with Judge Beckering," Young Lawyers Section of Grand Rapids Bar Association, Grand Rapids, Michigan. Notes supplied.

January 23, 2008: Presenter, opening remarks as Chairperson at 27th Annual Hillman Advocacy Program, Grand Rapids, Michigan. This is a 2 1/2-day trial skills training program sponsored by the United States District Court for the Western District of Michigan and the Western District of Michigan Chapter of the Federal Bar Association. Notes supplied.

From approximately 2008 to 2013 I volunteered several times as a mock trial/moot court judge for the "We the People" program, held at the Kent Intermediate School District in Grand Rapids, Michigan, and sponsored by the Center for Civic Education. I served as one of the panel judges who rated the performances of each high school team in order to determine which team proceeded to the next level. I do not recall the events specifically, but I believe any remarks I made would have been limited to evaluating the students. I have no notes, transcript, or recording. The address for the Center for Civic Education is 5115 Douglas Fir Road, Suite J, Calabasas, California 91302.

November 27, 2007: Guest speaker, luncheon sponsored by Grand Rapids Bar Association and Women Lawyers of West Michigan, Grand Rapids, Michigan. Notes supplied.

November 10, 2007: Guest speaker, "Update on Michigan Law Regarding Workers and Women's Issues," Region 1D Women's Conference, Grand Rapids, Michigan. I spoke on legal issues affecting working women. I have no notes, transcript, or recording. The address for Region 1D is 3300 Leonard, Northeast, Grand Rapids, Michigan 49525.

October 29, 2007: Guest speaker, "The Michigan Judicial System, Our Third Branch of Government," Central Woodlands 5th Grade Class, Grand Rapids, Michigan. Notes supplied.

October 18, 2007: Remarks at Investiture Ceremony for Hon. Jane M. Beckering, Michigan Court of Appeals, Grand Rapids, Michigan. Transcript supplied.

June 6, 2007: Guest speaker, "The Michigan Supreme Court," Democracy for America, Kent County Chapter, Grand Rapids, Michigan. Presentation supplied.

April 27, 2007: Panelist, "Managing the Balancing Act Between Work and Family," New Attorney Seminar, Grand Rapids Bar Association, Grand Rapids, Michigan. Notes supplied.

March 20, 2007: Guest lecturer, "Use of Strategy in Litigation," for business course taught by adjunct professor John Baxter, Grand Valley State University, Grand Rapids, Michigan. I spoke about negotiation strategies in litigation. I have no notes, transcript, or recording. The address for Grand Valley State University is 1 Campus Drive, Allendale, Michigan 49401.

From August 26, 2006 to November 7, 2006, I ran for election to the Michigan Supreme Court. I was nominated by the Michigan Democratic Party at Cobo Hall, located in Detroit, Michigan. I spoke to numerous caucuses on Saturday, August 26, 2006, and I gave an acceptance speech on Sunday, August 27, 2006. Over the ensuing 73 days, I spoke to various groups across the state. Upon searches of publicly available databases, copies of everything found online quoting me or describing my remarks are supplied. The theme of my campaign was that political partisanship has no place in the judiciary, the nonpartisan

branch of government, and that judicial activism, or any type of party favoritism, is inappropriate and unhealthy to democracy. Other than the candidate forum noted below, I have no transcripts or recordings of my remarks or speeches, but I have supplied notes reflecting the content of my public statements.

October 24, 2006: Speaker, Michigan Government Television ("MGTV") Michigan Supreme Court Candidate Forum. Recording supplied.

July 14, 2006: Speaker, "Telling a Med Mal Story to a Conservative Jury," Melvin Belli Institute, American Association for Justice, Seattle, Washington. Notes supplied.

May 12, 2006: Speaker, "Using a Velvet Hammer Approach to Jury Selection," Michigan Association for Justice annual "Rapid Fire" Seminar, Novi, Michigan. Written materials supplied.

March 6, 2006: Panelist, "Effective Closing Arguments," Gerald R. Ford American Inns of Court, Grand Rapids, Michigan. The panel was on effective closing arguments. I have no notes, transcript, or recording. The Gerald R. Ford American Inns of Court is no longer active and does not have a physical address.

February 13, 2006: Guest lecturer, "Negotiation Tactics in Litigation," for graduate course, "Negotiating: Skills & Theories," Aquinas College, Masters of Management Graduate Program, Grand Rapids, Michigan. Written materials supplied.

December 9, 2005: Speaker, "Voir Dire-Stepping into the Lion's Den," Michigan Association for Justice, Novi, Michigan. Written materials supplied.

December 1, 2005: Guest lecturer, "Investigation of Medical Issues in a Personal Injury Case," Legal Studies 428 course, Grand Valley State University, Grand Rapids, Michigan. Written materials supplied.

October 19, 2005: Co-moderator, "Guidelines for Getting into Court and Staying There, Apsey, NOI's, AOM & Waltz," Michigan Association for Justice, Novi, Michigan. This seminar addressed best practices in medical negligence claims in light of several Michigan Supreme Court rulings. I have no notes, transcript, or recording. The address for the Michigan Association for Justice is 325 South Walnut Street, Lansing, Michigan 48933.

July 21, 2005: Guest lecturer, "Negotiation Tactics in Litigation," Masters of Management Graduate Program course titled, "Negotiating: Skills & Theories," Aquinas College, Grand Rapids, Michigan. I spoke on negotiation strategies in litigation. I have no notes, transcript, or recording. The address for Aquinas College is 1700 Fulton Street, East Grand Rapids, Michigan 49506.

July 7, 2004: Moderator, "Experts Can Make or Break Your Case," American Association for Justice, Boston, Massachusetts. The program addressed the use of

experts in litigation. I have no notes, transcript, or recording. The address for the American Association for Justice is 777 6th Street, Northwest, Suite 200, Washington, District of Columbia 20001.

April 16, 2004: Speaker, "Effectively Using Your PDA," Michigan Association for Justice, Novi, Michigan. Presentation supplied.

October 1, 2003: Co-presenter, "Medical Records for Michigan Attorneys," National Business Institute, Grand Rapids, Michigan. Written materials supplied.

July 24, 2003: Presenter, "Documentation Issues and Charting for the Future in Michigan," seminar for nurses and other medical personnel, Lorman Education Services, Grand Rapids, Michigan. Written materials supplied.

May 30, 2003: Speaker, "Using Technology and the Internet to Discover Information Regarding Expert Witnesses," annual Rapid Fire seminar, Michigan Association for Justice, Novi, Michigan. Written materials supplied.

January 24, 2003: Faculty Demonstrator, Closing Argument in *Gilmore v. Global Waste Management*, Hillman Advocacy Program, held in United States District Court for the Western District of Michigan, Grand Rapids, Michigan. I have no notes, transcript, or recording. The current contact for the Hillman Program is C/O Andrea Bernard, Warner Norcross & Judd, 150 Ottawa Avenue, Northwest, Unit 150, Grand Rapids, Michigan 49503.

April 18, 2001: Co-moderator, "Overcoming Juror Bias in Michigan," Michigan Association for Justice, Grand Rapids, Michigan. The seminar was about jury selection. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Michigan Association for Justice is 325 South Walnut Street, Lansing, Michigan 48933.

April 28, 2000: Speaker, "The Use of Focus Groups," annual Rapid Fire seminar, Michigan Association for Justice, Detroit, Michigan. Written materials supplied.

April 18, 2000: Moderator, "Is the Health Care System Sick? Patient's Rights & Health Plan Liability," Grand Rapids Bar Association, Grand Rapids, Michigan. Notes supplied.

May 25, 1999: Co-presenter, "Analyzing Medical Records for the Michigan Paralegal," Institute for Paralegal Education (IPE), a division of the National Business Institute, Inc., Grand Rapids, Michigan. Written materials supplied.

January 25, 1999: Local host and commentator, "Effective Discovery Strategies and Dealing with Liens in Personal Injury Cases," video seminar presentation, Institute for Continuing Legal Education, Grand Rapids, Michigan. This continuing legal education seminar addressed discovery and dealing with liens. I have no notes, transcript, or recording. The address for the Institute of Continuing Legal Education is 1020 Greene Street, Ann Arbor, Michigan 48109.

January 21, 1999: Speaker, "The Key to Large Awards, Excess Economic Loss & Caps: Loss of Services," Michigan Association for Justice, Novi, Michigan. Written materials supplied.

December 9, 1997: Local host and commentator, "Tort Reform: Litigation Strategies for Plaintiffs and Defendants," video seminar presentation, Institute for Continuing Legal Education, Grand Rapids, Michigan. This continuing legal education seminar addressed litigation strategies. I have no notes, transcript, or recording. The address for the Institute of Continuing Legal Education is 1020 Greene Street, Ann Arbor, Michigan 48109.

September 23, 1997 (approximately): Co-presenter "Analyzing Medical Records for the Michigan Paralegal," Institute for Paralegal Education (IPE), a division of the National Business Institute, Inc., Grand Rapids, Michigan. Written materials supplied.

April 1, 1997: Local host and commentator, "The New World of Michigan Tort Reform: Survival Strategies," video seminar presentation, Institute for Continuing Legal Education, Grand Rapids, Michigan. This continuing legal education seminar addressed tort reform. I have no notes, transcript, or recording. The address for the Institute of Continuing Legal Education is 1020 Greene Street, Ann Arbor, Michigan 48109.

August 20, 1996: Presenter, "Paralegals and the Litigation Team," Institute for Paralegal Education (IPE), a Division of National Business Institute, Inc., Grand Rapids, Michigan. Written materials supplied.

May 6, 1996: Local host and commentator, "Liability and Damages After Tort Reform: A Michigan Civil Litigation Revolution in Three Acts," video education seminar, Institute for Continuing Legal Education, Grand Rapids, Michigan. I have no notes, transcript, or recording. The address for the Institute of Continuing Legal Education is 1020 Greene Street, Ann Arbor, Michigan 48109.

October 27, 1993: Moderator and presenter, "Computers & the Law, How to Implement Technology to Efficiently Change How You Practice Law," Grand Rapids Bar Association, Grand Rapids, Michigan. Written materials 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.

Tom Kirvan, *Guiding light: Judge Jane Beckering was inspired by a 'Finch'*, Grand Rapids Legal News, Jan. 6, 2021. Copy supplied.

Lynn Patrick Ingram, *No Stone Left Unturned*, Mich. B.J., Oct. 1, 2020. Copy supplied.

Cynthia Price, *Judge Jane Beckering is given Lifetime Judicial Achievement Award by ABOTA,* Grand Rapids Legal News, Jan. 16, 2019. Copy supplied.

Conor Dugan, *Meet Judge Jane M. Beckering,* Mich. Appellate Practice Section J., Spring 2017, Vol. 21, No. 2. Copy supplied.

Amanda Fessler, *New Book Teaches Witnesses to 'Calm Down, Speak Up, Ready!'*, Crown King Books Press release, Dec. 1, 2014. Copy supplied.

Emily Finn, *Science school for judges, MIT and Broad Institute open their doors to the judicial community for a workshop at the intersection of science and the law*, MIT News, September 20, 2011. Copy supplied.

Douglas Levy, *On the Stand: Hon. Jane M. Beckering*, Mich. L.W., Sep. 30, 2010. Copy supplied.

Meredith Skrzypczak, *Alito leads lawyers in renewal of oath—Catholic attorneys gather with the Supreme Court justice as a reminder of 'solemn responsibilities*, Grand Rapids Press, NewsBank, Oct. 26, 2010. Copy supplied.

John C. Buchanan, *Quality of Life*, The Primerus Paradigm, June 2008 (approximately). Copy supplied.

Cynthia Price, *NALS of Michigan hosts Law Day lunch, Beckering discusses rule of law*, Grand Rapids Legal News, Vol. 73, No. 7, May 14, 2008. Copy supplied.

Xi Alumna Appointed Judge, The Delta Gamma Times, Winter 2007–08. Copy Supplied.

Melissa P. Stewart, Esq., *Taking it up a notch, Granholm appoints two prominent litigators to fill COA vacancies*, 21 Mich. L.W. 1234, Oct. 29, 2007. Copy supplied.

Cynthia Price, *Beckering takes her place on the bench*, Grand Rapids Legal News, Oct. 24, 2007. Copy supplied.

David Czurak, *Beckering Takes a Seat*, Grand Rapids Bus. J., Sept. 10, 2007. Copy supplied.

Nate Reens, *GR Lawyer named to appeals court bench—She had inside track after running for state Supreme Court last year*, Grand Rapids Press, Aug. 21, 2007. Copy supplied.

Peter Geier, *State high court grapples with recusal issues*, Nat'l L.J., Jan. 8, 2007. Copy supplied.

Ben Miller, *Jane Beckering for Supreme Court*, election website, Dec. 13, 2006.

Copy supplied.

Marisol Bello, *Big Money Skips These Races: Special Interests Mostly on Sidelines*, Detroit Free Press, Nov. 3, 2006. Copy supplied.

Justice of the Supreme Court – Eight-Year Term – Vote for Two (2), League of Women Voters of Michigan Nonpartisan Voter Guide, Nov. 2006. Copy supplied.

Election 2006 Gannett Michigan Voters Guide, Candidate Detail, Jane M. Beckering, Gannett Mich. Group, Nov. 2006. Copy supplied.

Lawyers Election Guide, Jane M. Beckering, Candidate for the Michigan Supreme Court, Mich. L.W., Oct. 30, 2006. Copy supplied.

David Eggert, *Challengers debate role of court – So far, race to unseat two justices has been polite*, Grand Rapids Press, Oct. 29, 2006. Copy supplied.

Supreme Court picks: Corrigan, Cavanagh -Two distinguished jurists, Jackson Citizen Patriot, Oct. 26, 2006. Copy supplied.

David Eggert, *Two justices, three challengers*, Grand Haven Tribune, Oct. 24, 2006. Copy supplied.

James Prichard, *Michigan Supreme Court candidate Jane Beckering*, Wood tv 8, Oct. 8, 2006. Copy supplied.

Beckering seeks stability for court, Gongwer, Oct. 3, 2006. Copy supplied.

James Prichard, *Lawyering runs in Beckering's family*, The Associated Press State & Local Wire, Sept. 27, 2006. Copy supplied.

Beckering Vows to Balance Scales of Justice, MIRS News-Capitol Capsule, Sept. 13, 2006. Copy supplied.

Two MTLA Stalwarts Up for State-Wide Election, MTLA J., Vol. 40, No. 2, Fall 2006. Copy Supplied.

Attorneys abound in Beckering's family, Grand Rapids Associated Press, Fall 2006. Copy supplied.

Ed Golder, *Labor snub dooms Bowen's political* aspirations, Grand Rapids Press, Aug. 28, 2006: Copy supplied.

Judy Putnam, *Dems pick nominees following floor fights*, Kalamazoo Gazette, Aug. 28, 2006. Copy supplied.

Kathy Barks Hoffman, *Democrats wrap up party nominations at convention,*

Detroit Free Press, Aug. 27, 2006. Copy supplied.

From August 26, 2006 to November 7, 2006, I ran for election to the Michigan Supreme Court. I was nominated by the Michigan Democratic Party at Cobo Hall, located in Detroit, Michigan. I spoke to numerous caucuses on Saturday, August 16, and I gave an acceptance speech on Sunday, August 17, 2006. Over the ensuing 73 days, I spoke to various groups across the state. I have supplied copies of all media coverage in my possession. The theme of my campaign was that political partisanship has no place in the judiciary, the nonpartisan branch of government, and that judicial activism, or any type of party favoritism, is inappropriate and unhealthy to democracy.

May 23, 2005: Featured Guest, Radio Talk Show, Bud Hedinger Live, WFLA-540AM, Orlando, Florida. Topic of discussion was Journal of American Medicine Article regarding 98,000 deaths every day due to medical error. I have no clip or transcript.

$1.6 M for Botched Thyroidectomy, Verdicts & Settlements, 19 Mich. L.W. 781, May 2, 2005. Copy supplied.

Ted Roelofs, *Patient awarded $1.6 million*, Grand Rapids Press, Apr. 7, 2005: Copy supplied.

Primerus Member News: Primerus Member receives one of the largest Medical Malpractice verdicts in Grand Rapids, Michigan, The Primerus Paradigm, Apr. – June 2005. Copy supplied.

Karen M. Poole, *Bills in Michigan Legislature Aim to Repair Tort Reform 'Catch 22*, Mich. L.W., Sept. 22, 2003. Copy supplied.

Karen M. Poole and Kelly A. McCauley, *Women in the Legal Profession: Female Attorneys Share Perspectives on Challenges They Face*, 15 Mich. L. W. 1034, June 25, 2001. Copy supplied.

Seminar Examines Jurors and Biases, Mich. L.W., Vol. 15, No. 24, Apr. 16, 2001. Copy supplied.

Guest on *Lawyers Brunch* Radio Program, Wood AM 1300, hosted by Curt Benson and Michael Dunne, June 18, 2000. The topic was on personal injury law. I have no clip or transcript.

MTLA PACESETTER, Jane M. Beckering, MTLA Advance Sheet, Vol. 10, No. 8, Dec. 1999, p. 5. Copy supplied.

Ask the Lawyers, guest lawyer on WGVU-TV television program, Feb. 4, 1999. We answered questions from callers. I have no clip or transcript.

Ask the Lawyers, guest lawyer on WGVU-TV television program, Oct. 3, 1996. I

have no clip or transcript.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by Governor Jennifer Granholm to the Michigan Court of Appeals and took office on September 10, 2007. I was elected by Michigan voters to retain the position in 2008. I was re-elected by Michigan voters in 2012 and 2018. I ran unopposed in each election. The Michigan Court of Appeals has statewide jurisdiction and was created by the 1963 Michigan Constitution. Generally, it hears as a matter of right appeals from final orders of a circuit court or probate court, as well as some agency orders. Other lower court or tribunal decisions may be appealed only by application for leave to appeal. The court also has jurisdiction to hear some original actions, such as complaints for mandamus or superintending control against government officers or actions alleging that state law has imposed an unfunded or inadequately funded mandate on local units of government.

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

I have not presided over any cases as a trial court judge. As an appellate judge, I have presided over approximately 4,070 cases that have resulted in the issuance of opinions, and I have handled thousands of motions by way of issuance of orders.

i. Of these cases, approximately what percent were:

jury trials:	N/A
bench trials:	N/A

ii. Of these cases, approximately what percent were:

civil proceedings:	50%
criminal proceedings:	50%

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

See attached list of citations.

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. *People v. Wiley*, 324 Mich. App. 130 (2018), *appeal denied*, 503 Mich. 929 (2018)

These consolidated cases involved a challenge to the constitutionality of MCL 769.25a(6), which prohibited the application of good-time and disciplinary credits to juvenile offenders who were resentenced in the wake of the United States Supreme Court's decisions in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016). Mr. Wiley and Mr. Rucker argued that MCL 769.25a(6) violated the Ex Post Facto Clause of the United States and Michigan Constitutions by precluding the sentencing court from applying certain credits to the respective term-of-years sentences they received on resentencing in the aftermath of *Miller* and *Montgomery*. I concluded that MCL 769.25a(6) violated the Ex Post Facto Clause by imposing new restrictions on a prisoner's eligibility for release. I held that the effect of these new restrictions was to impose greater punishment for crimes committed before the enactment of the statute. In reaching this conclusion, I found persuasive the opinion of United States District Court Judge Mark A. Goldsmith who reached the same conclusion in *Hill v. Snyder*, 308 F. Supp. 3d 893 (E.D. Mich., 2018). The Michigan Supreme Court denied an application for leave to appeal in the case.

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2. *People v. Maggit*, 319 Mich. App. 675 (2017)

The issue in this case was whether a police officer had probable cause to arrest Mr. Maggit for violating a city ordinance that prohibited trespassing. Moments before his arrest, Mr. Maggit and his friend Mr. Brown were walking in a parking lot that was open to the public when they were commanded to stop by a police officer. Mr. Maggit did not stop, and the officer immediately informed Mr. Maggit that he was under arrest for trespassing. Mr. Maggit initially complied, but then fled from the officer. He was apprehended shortly thereafter and found to be in possession of a controlled substance. In a per curiam opinion, the Court of Appeals panel on which I sat held that there was no probable cause to make an arrest for trespassing. In addition, the panel rejected the notion that the arresting officer merely made a reasonable mistake of law when he arrested Mr. Maggit for trespassing. Finally, the panel held that the exclusionary rule should bar the use of unlawfully seized evidence at Mr. Maggit's criminal trial.

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3. *Bazzi v. Sentinel Ins. Co.*, 315 Mich. App. 763 (2016) (dissenting), *affirmed in part and reversed in part*, 502 Mich. 390 (2018)

This case involved the question of whether a third party who was innocent of fraud committed by an insured driver could, under Michigan's no-fault insurance law, receive statutorily mandated benefits even if the insured driver's no-fault policy was rescinded. The issue in this case concerned whether the Michigan

Supreme Court's decision in *Titan Ins. Co. v. Hyten*, 491 Mich. 547 (2012), abrogated the "innocent-third-party rule," as the rule had become known in this state's jurisprudence for several decades. The majority held that Mr. Bazzi, who was alleged to have been innocent of the fraudulent procurement of insurance perpetrated by the driver of the car in which he was riding at the time of his injuries, could not collect statutorily mandated automobile insurance benefits because the insurance policy under which he sought to collect should be rescinded because of the driver's fraud. In a dissenting opinion, I traced the history of the innocent-third-party rule and concluded that it survived the *Titan Ins. Co.* decision issued by the Michigan Supreme Court. My reasoning focused on the mandatory nature of the benefits at issue in the case as well as on principles of equity and the equitable nature of the remedy of rescission.

After granting leave to appeal, the Michigan Supreme Court held that, while the innocent third-party rule did not survive *Titan*, an insurer is not automatically entitled to the equitable remedy of rescission of an insurance contract in the event of fraud. The Michigan Supreme Court emphasized that, when an insurer seeks rescission, the trial court is required to balance the equities between the insurer and the innocent third party in order to determine whether the requested relief should issue.

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4. *People v. Root*, No. 331123, 2017 WL 3798495 (Mich. Ct. App. Aug. 31, 2017), *appeal denied*, 501 Mich. 1070 (2018)

Ms. Root had been tried and convicted of first-degree premeditated murder arising from the death of her landlord eight years before trial. We concluded that the trial court erroneously denied her motion to suppress portions of her videotaped statement to the police that were obtained in violation of her constitutional rights. We ruled that her statements were procured through what turned into a custodial interrogation without informing her of her *Miranda* rights, thus depriving her of her Fifth Amendment privilege against self-incrimination. We vacated Ms. Root's conviction and remanded for a new trial. The Michigan Supreme Court denied Ms. Root's application for leave to appeal. Ms. Root was retried without the tainted evidence and convicted of second-degree murder.

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5. *AFT Michigan v. State* (On Remand), 315 Mich. App. 602 (2016); also *AFT Michigan v. State*, 297 Mich. App. 597 (2012)

The relevant issue in this case was the constitutionality of a 2010 amendment to Michigan's Public School Employees' Retirement Act that required all public school employees to contribute three percent of their salaries to the Michigan Public School Employees' Retirement System. The plaintiffs challenged the constitutionality of the amendment on various grounds. The trial court ruled in favor of the plaintiffs, concluding that the 2010 act violated the plaintiffs' rights under the Takings Clauses and the Due Process Clauses of the federal and state Constitutions, but that it did not violate the constitutional provisions barring the impairment of contracts by the state. On appeal, we held that the 2010 act violated the Takings Clauses and Due Process Clauses, but that it also violated the Contracts Clauses of the state and federal Constitutions by impairing employment contracts between public school employees and employer school districts. While the state's application for leave to appeal was pending in the Michigan Supreme Court, the state Legislature responded to this panel's decision by passing a 2012 act designed to correct the constitutional infirmities of the 2010 act, in part by allowing employees to opt out of certain retiree benefits and, therefore, to no longer be subject to the mandatory three percent reduction in their salaries. Shortly after issuing an opinion upholding the 2012 act against a constitutional challenge, the Michigan Supreme Court vacated our prior decision and remanded the matter to us for consideration in light of the 2012 act. On remand, we held, among other things, that the 2012 act did not render our previous constitutional analyses moot. We also held that during the period of mandatory contributions, i.e., between the effective date of the 2010 act and that of the 2012 act, the compulsory collection of three percent of employees' wages substantially and unconstitutionally impaired the employment contracts between employees and their educational employers. We remanded the matter and directed the trial court to return the funds collected during the mandatory contribution period to the relevant employees, with interest. Affirming our decision in part, the Michigan Supreme Court held that the 2010 act violated the Contract Clauses of the federal and state Constitutions for the reasons we had stated, and ordered that the funds collected during the mandatory period be returned to the plaintiffs in accordance with our decision.

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6. *People v. Malone*, No. 329989, 2016 WL 5853288 (Mich. Ct. App. Oct. 4, 2016), *appeal denied*, 500 Mich. 989 (2017)

Malone required us to decide whether an officer had reasonable articulable suspicion to call for a canine sniff of a car pulled over in a routine traffic stop for improperly tinted windows. Officers searching the car eventually found cocaine in a plastic bag in the engine's air filter. The trial court denied Mr. Malone's motion to suppress that evidence. Reviewing the trial court's decision, we observed that the officer who pulled defendant over testified at the suppression hearing that his intuition told him that something was "not right," but that he was never able to articulate what reasonable inferences he drew from the facts or what his experience and training allowed him to infer from what he saw. In addition, video from the officer's body camera, as well as his own testimony, clearly indicated that the officer decided to order a canine sniff because Mr. Malone refused to allow him to search the vehicle. We concluded that the totality of the circumstances did not rise to the level of reasonable suspicion supported by articulable facts, and reversed the trial court's ruling on the motion to suppress.

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7. *Doe v. Dep't of Corrections*, 312 Mich. App. 97 (2015) (concurring in part and dissenting in part), *vacated in part and leave denied in part*, 499 Mich. 886 (2016)

At issue in this case was whether the exclusion of prisoners from the scope of protections afforded by Michigan's Elliott-Larsen Civil Rights Act (ELCRA) was constitutional. In a partial concurrence and dissent, I analyzed the Equal Protection Clause of the Michigan Constitution, Const. 1963, art. 1, § 2, and concluded that the exclusion of prisoners from the ELCRA was contrary to the state constitutional guarantee of equal protection. To that end, I concluded that the first sentence of art. 1, § 2 made clear that the mandatory legislation—which later became the ELCRA—to be enacted under art. 1, § 2 was to protect all persons, without exclusion.

On application for leave to appeal, the Michigan Supreme Court vacated the majority opinion on this issue. In a subsequent appeal arising from the same set of operative facts, a separate panel of the Michigan Court of Appeals expressly adopted my analysis regarding the equal protection violation occasioned by the ELCRA's exclusion of prisoners from statutory civil rights protections. See *Does 11-18 v. Dep't of Corrections*, 323 Mich. App. 479, 487–90 (2018).

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8. *People v. Lockridge*, 304 Mich. App. 612 (2014) (concurring)

This decision involved consideration of whether the judicial fact-finding permitted by Michigan's indeterminate sentencing scheme violated convicted defendants' due-process rights. Mr. Lockridge challenged his minimum sentence because it departed upward from the sentencing guidelines recommendation on the basis of judge-found facts. Bound by a Michigan Court of Appeals decision holding that the judicial fact-finding required by the Michigan indeterminate sentencing scheme did not violate the Sixth and Fourteenth Amendments of the Constitution, the panel affirmed the sentence. Although compelled to concur in the result, I explained in my concurrence why the Michigan case was wrongly decided and analyzed the relevant federal decisions addressing the limits of judicial fact-finding on sentencing. Of particular significance was *Alleyne v. United States*, 570 U.S. 99 (2013), which had been issued during the pendency of Mr. Lockridge's appeal. I concluded that we were bound by *Alleyne*, and that *Alleyne* rendered the judicial fact-finding required by Michigan's indeterminate sentencing scheme unconstitutional. As a remedy, I recommended making the Michigan sentencing guidelines advisory. The Michigan Supreme Court granted Mr. Lockridge's application for leave to appeal and concluded, as I had, that the federal decisions I analyzed applied to Michigan's sentencing guidelines and rendered the guidelines constitutionally infirm, and remedied the infirmity by making the sentencing guidelines advisory.

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9. *People v. Woolfolk*, 304 Mich. App. 450, 451 (2014), *affirmed*, 497 Mich. 23 (2014)

This case presented us with an issue of first impression regarding how to calculate age – whether Mr. Woolfolk, who shot and killed someone the day before his 18th

birthday and had been sentenced to life imprisonment without parole, was entitled to resentencing as a juvenile. We surveyed cases from jurisdictions that used the common-law age rule, cases from jurisdictions that used the birthday rule, and the rationale for the common-law rule, and thoroughly discussed relevant federal and state authorities on the issue, including the Michigan Constitution, Michigan Attorney General opinions, Michigan statutes and court rules, and Michigan caselaw. We concluded that the birthday rule of age calculation applies in Michigan, and held that Mr. Woolfolk was entitled to resentencing as a juvenile. Our decision was affirmed on appeal.

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10. *People v. Buie* (On Remand), 298 Mich. App. 50 (2012); also *People v. Buie* (After Remand), 291 Mich. App. 259 (2011); *People v. Buie*, 285 Mich. App. 401, (2009)

The central issue on appeal in this case was whether the use of interactive video technology at trial to present expert witness testimony had violated Mr. Buie's confrontation rights. We first remanded the matter to the trial court to determine whether the use of interactive video technology had been necessary to further a public policy or state interest important enough to outweigh Mr. Buie's confrontation rights. In an order denying leave to appeal our decision, the Michigan Supreme Court also ordered the trial court to make findings regarding good cause and consent to the video procedure, as required by our court rules. On remand, the trial court held an evidentiary hearing at which defense counsel testified that while she did not object to use of the technology, defendant expressed disagreement with its use and instructed her to object. Counsel further asserted that her statement at trial that Mr. Buie wanted to question "the veracity of these proceedings" constituted an objection to the use of video technology. The trial court concluded that there was no error in permitting the video procedure because, among other reasons, defendant had consented to the procedure. In a decision issued after remand, we concluded that defendant had not consented to the procedure, that the trial court erred by permitting the witnesses to testify by way of interactive video technology, and that the error required reversal. The Michigan Supreme Court reversed our decision, holding that when a decision by trial counsel constituted reasonable trial strategy, the right of confrontation could

be waived by defense counsel as long as the defendant did not object on the record. The Supreme Court explained that Mr. Buie's statement about wanting to question the veracity of the proceedings did not constitute an objection to the use of the technology, and concluded that he had waived his right to confrontation. The Supreme Court then remanded the matter to us for consideration of Mr. Buie's remaining issues on appeal. Finding that they lacked merit, we affirmed his convictions.

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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. *People v. Johnson*, No. 351308, 2021 WL 1325360 (Mich. Ct. App. Apr. 8, 2021)

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2. *People v. Wiley*, 324 Mich. App. 130 (2018), *appeal denied*, 503 Mich. 929 (2018)

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3. *People v. Hyatt*, 316 Mich. App. 368 (2016) (majority and concurring)

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4. *Bazzi v. Sentinel Ins. Co.*, 315 Mich. App. 763 (2016) (dissenting)

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5. *People v. Root*, No. 331123, 2017 WL 3798495 (Mich. Ct. App. Aug. 31, 2017), *appeal denied*, 501 Mich. 1070 (2018)

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6. *Doe v. Dep't of Corrections*, 312 Mich. App. 97 (2015) (concurring in part and dissenting in part)

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7. *Whitman v. City of Burton (On Second Remand)*, 311 Mich. App. 315 (2015) (dissenting); also *Whitman v. City of Burton (On Remand)*, 305 Mich. App. 16 (2014) (dissenting) *Whitman v. City of Burton*, 293 Mich. App. 220 (2011) (dissenting)

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8. *People v. Lockridge*, 304 Mich. App. 278 (2014) (concurring)

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9. *Thomas M. Cooley Law Sch. v. Doe 1*, 300 Mich. App. 245 (2013) (concurring in part and dissenting in part)

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10. *Slaughter v. Blarney Castle Oil Co.*, 281 Mich. App. 474 (2008)

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

Certiorari has not been granted in any case over which I have presided. Certiorari was requested and denied in the following cases:

People v. Elatrache, No. 324918, 2016 WL 1578937 (Mich. Ct. App. Apr. 19, 2016), *appeal denied*, 500 Mich. 898 (2016), *cert. denied sub nom. Elatrache v. Jackson*, 2021 WL 2637880 (2021)

People v. Pennebaker, No. 335371, 2018 WL 521900 (Mich. Ct. App. Jan. 23, 2018), *appeal denied*, 499 Mich. 916 (2016), *cert. denied sub nom. Pennebraker, Danny R. v. Rewerts, Warden*, 2021 WL 2519367 (2021)

People v. Trowbridge, No. 300460, 2012 WL 4373407 (Mich. Ct. App. Sept. 25, 2012), *appeal denied*, 497 Mich. 1002 (2015), *cert. denied sub nom. Trowbridge v. Woods*, 2021 WL 1746328 (2021)

People v. Griffis, No. 320033, 2015 WL 2213711 (Mich. Ct. App. May 12, 2015), *appeal denied*, 499 Mich. 918 (2016), *cert. denied sub nom. Griffis v. Parish*, 2021 WL 1520907 (2021)

People v. Patten, No. 343798, 2019 WL 6173664 (Mich. Ct. App. Nov. 19, 2019), *appeal denied*, 505 Mich. 1043, *cert. denied sub nom. Patten v. Michigan*, 141 S. Ct. 1408 (2021)

People v. Pope, Nos. 306372, 308999, 2013 WL 5857775 (Mich. Ct. App. Oct. 31, 2013), *appeal denied*, 495 Mich. 1006 (2014), *cert. denied sub nom. Overton v. Macauley*, 141 S. Ct. 1405 (2021)

People v. Aguilar, No. 317215, 2014 WL 6602532 (Mich. Ct. App. Nov. 20, 2014), *appeal granted in part, cause remanded by* 499 Mich. 980 (2016), *cert. denied sub nom. Aguilar v. Chapman*, 141 S. Ct. 1278 (2021)

People v. Burnside, No. 309807, 2014 WL 1515265 (Mich. Ct. App. Apr. 17, 2014), *appeal denied*, 497 Mich. 889 (2014), *cert. denied sub nom. Burnside v. Rewerts*, 141 S. Ct. 1140 (2020)

People v. Smith, No. 286701, 2009 WL 3837414 (Mich. Ct. App. Nov. 17, 2009), *appeal denied*, 485 Mich. 1130 (2010), *cert. denied sub nom. Smith v. Nagy*, 141 S. Ct. 634 (2020)

People v. Clark, No. 332216, 2017 WL 2882546 (Mich. Ct. App. July 6, 2017), *vacated in part, appeal denied in part*, 498 Mich. 858 (2015), *cert. denied sub nom. Clark v. Linsday*, 141 S. Ct. 165 (2020)

People v. Colbert, No. 319452, 2105 WL 1227657 (Mich. Ct. App. Mar. 17, 2015), *appeal denied*, 498 Mich. 886 (2015), *cert. denied sub nom. Colbert v. Burt*, 141 S. Ct. 352 (2020)

People v. Brown, No. 340767, 2019 WL 2146238 (Mich. Ct. App. May 16, 2019), *appeal denied*, 504 Mich. 998 (2019) *cert. den sub nom. Brown v. Michigan*, 140 S. Ct. 2578 (2020)

People v. Lor, Nos. 310090, 310097, 2014 WL 3784341 (Mich. Ct. App. July 31, 2014), *appeal denied*, 497 Mich. 982 (2015), *cert. denied sub nom. Lor v. Jackson*, 140 S. Ct. 269 (2019)

People v. Haney, No. 304248, 2012 WL 5258600 (Mich. Ct. App. Oct. 23, 2012), *appeal denied*, 493 Mich. 954 (2013), *cert. denied sum nom. Haney v. Jackson*, 140 S. Ct. 177 (2019)

People v. Jessie, Nos. 335736, 335738, 2018 WL 1936018 (Mich. Ct. App. Apr. 24, 2018), *appeal denied*, 503 Mich. 889 (2018), *cert. denied sub nom. Jessie v. Michigan*, 140 S. Ct. 174 (2019)

People v. Hyatt, 316 Mich. App. 368 (2016), *reversed in part and affirmed in part, People v. Skinner*, 502 Mich. 89 (2018), *cert. denied sub nom. Hyatt v. Michigan*, 139 S. Ct. 1543 (2019)

People v. Thompson, No. 305760, 2013 WL 276042 (Mich. Ct. App. Jan. 24, 2013), *appeal denied*, 494 Mich. 883 (2013), *cert. denied sub nom. Thompson v. Nagy*, 139 S. Ct. 1457 (2019)

People v. Anderson, No. 293574, 2010 WL 4226641 (Mich. Ct. App. Oct. 26, 2010), *appeal denied*, 489 Mich. 971 (2011), *cert. denied sub nom. Anderson v. Lesatz*, 139 S. Ct. 1454 (2019)

People v. Danielak, Nos. 305491, 305493, 2012 WL 6913789 (Mich. Ct. App. Nov. 20, 2012), *appeal denied*, 494 Mich. 852 (2013), *cert. denied sub nom. Danielak v. Brewer*, 139 S. Ct. 1267 (2019)

People v. Raisbeck, 312 Mich. App. 759 (2015), *appeal denied*, 499 Mich. 871 (2016), *cert. denied sub nom. Raisback v. Stewart*, 139 S. Ct. 601 (2018)

People v. Williams, No. 301384, 2013 WL 5629647 (Mich. Ct. App. Oct. 15, 2013), *appeal denied*, 497 Mich. 852 (2014), *cert. denied sub nom. Williams v. Campbell*, 139 S. Ct. 338 (2018)

People v. Kissner, No. 335602, 2018 WL 1020682 (Mich. Ct. App. Feb. 22, 2018), *appeal denied*, 502 Mich. 940 (2018), *cert. denied sub nom. Kissner v. Michigan*, 139 S. Ct. 572 (2018)

People v. Preston, No. 298796, 2012 WL 5853223 (Mich. Ct. App. Oct. 30, 2012), *appeal denied*, 493 Mich. 969 (2013), *cert. denied sub nom. Preston v. Smith*, 139 S. Ct. 431 (2018)

People v. Taylor, No. 320085, 2015 WL 5657380 (Mich. Ct. App. Sept. 24, 2015), *appeal denied*, 499 Mich. 871 (2016), *cert. denied sub nom. Taylor v. Jackson*, 139 S. Ct. 79 (2018)

People v. Zora, No. 296508, 2011 WL 2623384 (Mich. Ct. App. July 5, 2011), *appeal denied*, 491 Mich. 852 (2012), *cert. denied sub nom. Zora v. Winn*, 138 S. Ct. 2627 (2018)

People v. Abela, No. 307768, 2013 WL 5576155 (Mich. Ct. App. Oct. 10, 2013), *appeal denied*, 496 Mich. 863 (2014), *cert. denied sub nom. Abela v. Washington*, 138 S. Ct. 2582 (2018)

People v. Stewart, No. 313097, 2014 WL 1233946 (Mich. Ct. App. Mar. 25, 2014), *appeal denied*, 497 Mich. 882 (2014), *habeas corpus conditionally granted by Stewart v. Mackie*, 196 F. Supp. 3d 734 (2016), *reversed and remanded by Stewart v. Trierweiler*, 867 F. 3d 633 (2017), *on remand*, 2018 WL 3631986 (E.D. Mich., July 31, 2018), *cert. denied sub nom.*, 138 S. Ct. 1998 (2018)

People v. Perreault, No. 293324, 2011 WL 1901994 (Mich. Ct. App. May 19, 2011), *appeal denied*, 490 Mich. 911 (2011), *cert. denied sub nom. Perreault v. Stewart*, 138 S. Ct. 1299 (2018)

People v. Shaver, No. 300950, 2012 WL 6035519 (Mich. Ct. App. Dec. 4, 2012), *appeal denied*, 495 Mich. 920 (2014), *cert. denied sub nom. Shaver v. Klee*, 138 S. Ct. 744 (2018)

People v. Mann, No. 281673, 2009 WL 3465495 (Mich. Ct. App. Oct. 27, 2009), *appeal denied*, 486 Mich. 901 (2010), *cert. denied sub nom. Mann v. Bauman*, 138 S. Ct. 680 (2018)

Altobelli v. Hartmann, 307 Mich. App. 612 (2014), *reversed in part, vacated in part*, 499 Mich. 284, *cert denied*, 137 S. Ct. 979 (2016)

People v. McCoy, No. 318820, 2015 WL 774432 (Mich. Ct. App. Feb. 24, 2015), *appeal denied*, 498 Mich. 919 (2015), *cert. denied sub nom. McCoy v. Michigan,* 137 S. Ct. 184 (2016)

People v. Carroll, No. 317174, 2014 WL 5162476 (Mich. Ct. App. Oct. 14, 2014), *appeal denied*, 498 Mich. 884 (2015), *cert. denied sub nom. Carroll v. Michigan*, 136 S. Ct. 2513 (2016)

People v. Bachynski, No. 281550, 2009 WL 723600 (Mich. Ct. App. Mar. 19, 2009), *appeal denied*, 485 Mich. 892 (2009), and *cert. denied sub nom. Bachynski v. Stewart*, 136 S. Ct. 2026 (2016)

People v. Lockridge, 304 Mich. App. 278 (2013), *affirmed in part and reversed in part*, 498 Mich. 358 (2015), *cert. denied sub nom. Michigan v. Lockridge,* 577 U.S. 1043 (2015)

People v. Shivers, No. 305426, 2014 WL 310194 (Mich. Ct. App. Jan. 28, 2014), *appeal denied*, 496 Mich. 860 (2014), *cert. denied sub nom. Shivers v. Michigan*, 574 U.S. 941 (2014)

People v. Elliott, 295 Mich. App. 623 (2012), *reversed*, 494 Mich. 292 (2013), *cert denied sub nom. Elliot v. Michigan*, 571 U.S. 1077 (2013)

People v. Shou Yu Chen, No. 301153, 2012 WL 516062 (Mich. Ct. App. Feb. 16, 2012), *appeal denied*, 493 Mich. 866 (2012), *cert. denied sub nom. Chen v. Michigan,* 571 U.S. 973 (2013)

People v. Ballinger, No. 275752, 2008 WL 1006917 (Mich. Ct. App. Apr. 10, 2008), *appeal denied*, 482 Mich. 975 (2008), *cert. denied sub nom. Ballinger v. Prelesnik*, 570 U.S. 923 (2013)

Simpson v. JP Morgan Chase Bank, NA, No. 292955, 2010 WL 381853 (Mich. Ct. App. Sept. 30, 2010), *appeal denied*, 493 Mich. 871 (2012), *cert. denied sub nom.*, 569 U.S. 1026 (2013)

People v. Solernorona, No. 299269, 2012 WL 1521444 (Mich. Ct. App. May 1, 2012), *appeal denied*, 493 Mich. 896 (2012), *cert. denied sub nom. Solernorona v. Michigan*, 569 U.S. 951 (2013)

In re Sorrell, No. 295642, 2010 WL 371309 (Mich. Ct. App. Sept. 23, 2010), *appeal denied*, 488 Mich. 903 (2010), *cert. denied sub nom. Sorrell v. Michigan Dept. of Human Services*, 562 U.S. 1292 (2011)

Hudson v. Lorence, No. 291714, 2010 WL 3719315 (Mich. Ct. App. Sept. 23, 2010), *appeal denied*, 489 Mich. 897 (2011), *cert. denied sub nom.*, 565 U.S. 1021 (2011)

People v. Jenkins, No. 293668, 2010 WL 4493514 (Mich. Ct. App. Nov. 9, 2010), *appeal denied*, 489 Mich. 862 (2011), *cert. denied sub nom. Jenkins v. Michigan*, 565 U.S. 835 (2011)

People v. Carter, No. 290493, 2010 WL 1979442 (Mich. Ct. App. May 18, 2010), *appeal denied*, 499 Mich. 913 (2010), *cert. denied sub nom. Carter v. Michigan*, 563 U.S. 908 (2011)

People v. Charles, No. 283452, 2009 WL 608404 (Mich. Ct. App. Mar. 10, 2009), *appeal denied*, 484 Mich. 872 (2009), *cert. denied sub nom. Charles v. Michigan*, 558 U.S. 1155 (2010)

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.

A summary of and citations for all opinions that I either wrote or approved of as a panel member that were reversed by a reviewing court or where our judgment was affirmed with significant criticism of our substantive or procedural rulings is attached.

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.

Approximately 3,723 opinions, representing 91% of the opinions issued by my panels, have been unpublished. These opinions are available on Westlaw and Lexis. They can also be found online at https://courts.michigan.gov/opinions_orders/opinions_orders/pages/default.aspx#PartyName.

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.

People v. Simmons (dissenting), ___ Mich. App. __; No. 349547, 2021 WL 2753235 (Mich. Ct. App. July 1, 2021)

People v. Johnson, __ Mich. App. __; No. 351308, 2021 WL 1325360 (Mich. Ct. App. Apr. 8, 2021)

People v. Wiley, 324 Mich. App. 130 (2018), *appeal denied*, 503 Mich. 929 (2018)

People v. Hyatt (majority and concurring), 316 Mich. App. 368 (2016), *affirmed in part and reversed in part*, 502 Mich. 89 (2018), *cert. denied by Hyatt v. Michigan*, 139 S. Ct. 1543 (2019)

John Doe 1 v. Dep't of Corrections (concurring in part and dissenting in part), 312 Mich. App. 97 (2015), *vacated in part and leave denied in part*, 499 Mich. 886 (2016)

Associated Builders and Contractors v. City of Lansing, 305 Mich. App. 395; (2014), *affirmed in part and vacated in part*, 499 Mich. 177 (2016)

People v. Lockridge, (concurring), 304 Mich. App. 278 (2014), *affirmed in part and reversed in part*, 498 Mich. 358 (2015), *certiorari denied by Michigan v. Lockridge*, 577 U.S. 1043 (2015)

Thomas M. Cooley Law School v. John Doe 1 (concurring in part and dissenting in part), 300 Mich. App. 245 (2013)

People v. Cortez (dissenting), 299 Mich. App. 679 (2013), *appeal denied*, 495 Mich. 871 (2013)

People v. Elliott, 295 Mich. App. 623 (2012), *reversed*, 494 Mich. 292 (2013), *cert. denied by Elliot v. Michigan*, 571 U.S. 1077 (2013)

Blue Harvest, Inc. v. Dep't of Treasury (concurring), 288 Mich. App. 267 (2010), *appeal denied*, 488 Mich. 900 (2010)

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant

or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I base my decisions with respect to recusal on Michigan Court Rule 2.003 and the Michigan Code of Judicial Conduct, adopted October 1, 1974. The Court of Appeals maintains a conflict of interest database and I add to it as necessary. The judges are also periodically asked to review the list to ensure that it is up-to-date and complete. This database has proven to be a very successful tool, and only a couple of cases have been inadvertently assigned to me in contravention to the conflicts database, and were immediately reassigned. I have never been the subject of a recusal motion.

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.

With the exception of my own campaign in 2006, I have never held office in any political party or for any election committee. While I was in private practice in Grand Rapids I recall that I was identified on event advertisements as one of a number of "hosts" for fundraisers in Grand Rapids for various political candidates, such as Former Governor Jennifer Granholm, Senator Debbie Stabenow, and State Representative Michael Sak. I hosted a fundraiser for Michael Sak at my home when he ran for re-election in the summer of 2005. This all occurred before I was appointed to the Michigan Court of Appeals in 2007. I have paid dues to be a member of the Kent County Democratic Party and the Michigan Democratic party over various years, although I have not been active in either one.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

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

I 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;

McDermott, Will & Emery
444 West Lake Street
Chicago, Illinois 60606
Summer Associate (1989)
Associate (1990 –1992)

Buchanan & Bos, PC
300 Ottawa Avenue, Northwest, Suite 800
Grand Rapids, Michigan 49503
Summer Associate (1988)
Associate (1992 – 1995)

Buchanan, Silver & Beckering, PLLC,
300 Ottawa Avenue, Northwest, Suite 800
Grand Rapids, Michigan 40503
Member/Partner (1995 – 2000)

Buchanan & Beckering, PLLC,
171 Monroe Avenue, Northwest, Suite 750
Grand Rapids, Michigan 49503
Member/Partner (2000 – 2007)

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. Prior to becoming a judge in 2007, I served as an occasional Kent County Circuit Court case evaluator and "Blue Ribbon Panel" evaluator, pursuant to Michigan Court Rule 2.403.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

My law practice concentrated on complex civil litigation. While at McDermott, Will & Emery from 1990 to 1992, I handled primarily multi-state commercial litigation, but during my time as a summer associate I also rotated through the tax and corporate and securities law departments. While at Buchanan & Bos, PC from 1992 to 1995, I handled a wide variety of litigation including ordinary negligence, third-party no-fault litigation, wrongful death, medical negligence, business litigation, product liability defense, multi-district litigation, and environmental insurance litigation. In the mid-1990s I accepted a couple of criminal assignments in state court and a pro bono 42 U.S.C. § 1983 prisoner civil rights action in federal court. While at Buchanan, Silver & Beckering, PLLC from 1995 to 2000, I focused my practice primarily in the area of medical negligence, catastrophic personal injury, and wrongful death. Likewise, while at Buchanan & Beckering, PLLC from 2000 to 2007, I focused my practice primarily in the area of medical negligence, catastrophic personal injury, and wrongful death.

Since 2007 I have served as a state appellate judge.

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

From 1990 to 1992, my clients were typically large corporations. From 1992 to 2007, my clients were typically individuals (or the personal representative of an estate) who had suffered catastrophic personal injury or death due to medical negligence or other forms of negligence. I also represented a few companies in product liability defense matters prior to tort reform legislation in 1996, which changed the landscape of that area of law in Michigan. My niche by the time I left private practice had primarily been medical negligence for the prior 15 years.

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.

One hundred percent of my law practice was in litigation. I appeared in court regularly.

i. Indicate the percentage of your practice in:

1. federal courts: 5% (approximate)
2. state courts of record: 95% (approximate)

3. other courts: 0%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 99%
2. criminal proceedings: 1%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried three cases to verdict, two of which lasted approximately two weeks and the third lasted approximately one week. In two of the trials, I was the sole counsel for my client. In the third trial, I would be considered the second chair, although I handled a number of the direct and cross examinations and managed most of the lay witnesses. I represented the plaintiffs in two trials and the defendant corporation in the third trial. One case was a medical negligence claim, one was a negligence and nuisance claim, and one was a product liability claim.

A fourth case settled mid-trial, and in that case I was co-counsel. The case settled when the opposing party agreed to pay our settlement demand figure as I was wrapping up my opening statement.

i. What percentage of these trials were:
1. jury: 100%
2. non-jury: 0%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not 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. *Bernott v. Spectrum Health Hospitals et al.*, Kent County Probate Court, Judge David Murkowski, Ct. Case No. 06-182445; 2005 – 2007.

I represented Mr. and Mrs. Bernott in a medical negligence case. I was lead counsel. Mrs. Bernott underwent an elective rotator cuff repair surgery and suffered severe hypoxic brain injury in the process, leaving her permanently disabled and requiring 24-hour care for the rest of her life. The anesthesia team was using a new piece of anesthesia equipment that it was not properly trained to use, and it failed to heed repeated audible and visible warnings that the machine was malfunctioning and not delivering sufficient oxygen to the sedated patient. Mrs. Bernott suffered cardiac arrest due to oxygen deprivation and had to be resuscitated. The planned surgical procedure on Mrs. Bernott's shoulder was aborted. Defendants required plaintiffs to file a Notice of Intent to File Claim and retain affidavits from a team of medical experts from around the country in order to prove malpractice and proximate cause. After years of preparation and pre-suit discussions, the case was submitted for facilitative mediation and settled for a confidential amount, which was approved by the probate court.

Counsel for Defendant
John C. O'Loughlin
Smith Haughey Rice & Roegge
100 Monroe Center, Northwest
Grand Rapids, MI 49503
(616) 774-8000

2. *Steck v. Cowden, M.D., et al.*, 17th Circuit Court, Kent County, Hon. Mark A. Trusock, Case No. 06-05520, 2005 – 2007 (approximately).

I represented Mr. and Mrs. Steck in a medical negligence action. I was lead counsel. Following cataract surgery, the defendant doctor neglected to document the fact that he had accidentally torn a hole in the posterior chamber of Mr. Steck's eye, increasing the risk of a post-operative retinal detachment. When signs and symptoms of a retinal detachment later developed, defendant doctor chose to assume that Mr. Steck's problems were probably due to leftover particles of cataract he left in the eye. Mr. Steck returned multiple times to defendant doctor with increasing concerns as to why his vision was getting worse, and defendant doctor wrongly reassured him that his vision would clear after the performance of a laser procedure designed to remove leftover cataract fragments. That surgery failed to improve the situation, yet defendant doctor advised Mr. Steck to be patient and let the swelling resolve. Defendant doctor continued to minimize the situation, prompting Mr. Steck to demand that his vision loss be evaluated, wherein he was told that defendant doctor would not be available for a couple of days. When defendant doctor finally dilated Mr. Steck's eye and examined the retina, it was fully detached and heavily scarred due to the extended lack of vascular supply. The defendant doctor's negligence caused Mr. Steck to become permanently blind in one eye, and his eye eventually had to be excised. I filed suit, pursued discovery, underwent case evaluation, and the case settled for a confidential amount before trial.

Counsel for Defendant

Dolores Sears-Ewald
Aardema, Whitelaw & Sears-Ewald, PLLC (now defunct)
24601 250th Avenue, Southeast
Maple Valley, WA 98038
(253) 697-3336

3. *Clay v. Hackley Hospital et al.*, 14th Judicial Circuit Court, Muskegon County, Hon. James M. Graves, Jr., Court Case No. 05-43666-NH; 2002 – 2006 (approximately).

I represented Mrs. Clay, as Next Friend for her minor son in a medical negligence lawsuit. I was lead counsel. During Mrs. Clay's labor and delivery of her son at defendant hospital on September 9, 2002, her son endured persistent and severe episodes of hypoxia for such an extended period of time that he sustained permanent and debilitating brain injuries due to hypoxic ischemic encephalopathy. He is severely disabled and requires 24-hour care. Plaintiffs alleged that defendants were negligent in failing to properly respond when fetal monitoring strips revealed a need to timely deliver the child. Defendants alleged that they acted in accordance with the standard of care. After several years of litigation, the case settled for a confidential amount through facilitative mediation and was approved by the trial court.

Counsel for Defendants

Mark E. Fatum
Rhoades, Mckee, PC,
55 Campau Avenue, Northwest, Suite 300
Grand Rapids, MI 49503
(616) 235-3500

William M. Newman, (formerly with Lague, Newman & Irish)
3854 Applewood Lane
Muskegon, MI 49441
(231) 780-4042

Ralph F. Valitutti, Jr.,
Kitch, Drutchas Wagner Valitutti & Sherbrook
Town Square Development
10 South Main Street, Suite 200
Mt. Clemens, MI 48043-7908
(586) 493-4431

4. *Bartolome v. Johnson et al.*, 17th Circuit Court, Kent County, Hon. Donald A. Johnston, Case No. 02-12241-NH; 2001 – 2005 (approximately).

I represented Mr. and Mrs. Bartolome in a medical negligence lawsuit. I was sole counsel. Mrs. Bartolome underwent surgery on August 1, 2000, for the purpose of

removing a benign goiter (enlarged thyroid gland) from her neck. Plaintiffs alleged that the defendant surgeon and his resident committed malpractice when they injured Mrs. Bartolome's left and right recurrent laryngeal nerves during surgery, which caused permanent paralysis of both of her vocal cords, leaving her with severely restricted breathing abilities and a compromised voice. The defendants contended that the surgery was performed correctly and the adverse outcome was a known risk. The case proceeded to trial and the jury returned a verdict of $1.6 million for the plaintiffs.

Counsel for Defendant

Richard G. Leonard (retired)
Rhoades, McKee, P.C.
55 Campau Avenue, Northwest, Suite 300
Grand Rapids, MI 49503
(616) 235-3500

5. *Mulholland v. Patton, D.O., et al.*, 8th Judicial Circuit Court, Montcalm County, Hon. Charles H. Miel, Court Case No. 02-M-1280; 2001 – 2005 (approximately).

I represented the Estate of Mr. Mulholland in a wrongful death action. I was lead counsel. Mr. Mulholland experienced an onset of atrial fibrillation and presented to Carson City Hospital for evaluation and treatment. Internal medicine physician Dr. Patton elected to perform a cardioversion. Mr. Mulholland died during the cardioversion procedure. Plaintiff alleged that the doctor made three critical mistakes in conducting the cardioversion procedure: 1) rather than have Mr. Mulholland fast for at least six to eight hours as required for a procedure done under conscious sedation, the doctor ordered a 2,200 calorie per day diet, and Mr. Mulholland was fed both lunch and dinner; 2) rather than use at least 1,000 joules of electrical energy for the cardioversion as was explicitly required by medical literature, the doctor chose to experiment with less than one-third the minimum level; and 3) when the first shock failed to correct Mr. Mulholland's atrial rhythm, the doctor and hospital staff forgot to ensure that the cardioversion machine was re-set in order to synchronize the electrical shock with Mr. Mulholland's heartbeat, and consequently, he was shocked at the wrong time, jarring his heart into ventricular fibrillation, a deadly arrhythmia. Resuscitation efforts were complicated by the fact that Mr. Mulholland, unconscious for the procedure, vomited the dinner he had been fed, clogging the endotracheal tube that was mistakenly thrust into his esophagus instead of his trachea. Due to Mr. Mulholland's death, his family ultimately lost their 320-acre family dairy farm. Defendants alleged that they acted within the standard of care. After several years of litigation and within approximately a week of the scheduled trial, the case settled for a confidential amount and the settlement was approved by the trial court.

Counsel for Defendant

Robert M. Wyngaarden
Johnson & Wyngaarden, P.C.
3445 Woods Edge Drive
Okemos, MI 48864
(616) 349-3200

6. *Ter Haar v. Spectrum Health—Blodgett Campus et al.*, 17th Circuit Court, Kent County, Hon. Dennis B. Leiber, Case No. 02-07378-NH; 2002 – 2004 (approximately).

I represented the Estate of Mr. Ter Haar in a wrongful death action. I was lead counsel. Mr. Ter Haar experienced the sudden onset of excruciatingly severe chest, back, and flank pain. He presented to defendant's emergency department for diagnosis. He was administered morphine and a "GI cocktail" and sent home with a misdiagnosis of possible dehydration and muscle spasms. Further care inquiries by him were met with reassurance by his medical treaters. In fact, Mr. Ter Haar was suffering from an aortic dissection. He later died due to the missed diagnosis. I filed a lawsuit and conducted discovery. The case proceeded through case evaluation and settled for a confidential sum before trial, which was approved by the trial court.

Counsel for Defendant:

John C. O'Loughlin
Smith, Haughey, Rice & Roegge
100 Monroe Center Street, Northwest
Grand Rapids, MI 49503
(616) 774-8000

7. *Johnson v. Myers, O.D., et al.*, 28th Circuit Court, Wexford County, Hon. Charles O. Corwin, Case No. 02-16700-NH; 2000 – 2002 (approximately).

I represented Mr. and Mrs. Johnson in a medical negligence action. I was lead counsel. Mr. Myers was a highly regarded custom home builder. He treated with the defendant eye doctor for ten years, during which time he developed open-angle glaucoma, which entails a gradual increase in intraocular pressure that will progressively damage the optic nerve unless medically managed. Defendant doctor ignored increasing signs and symptoms of Mr. Johnson's glaucoma, persistently misdiagnosing him with keratoconus. His misdiagnosis occurred over the course of 46 visits, eventually leading to Mr. Johnson becoming 90% peripherally blind in his right eye and 95% peripherally blind in his left eye. He was expected to be totally blind within ten years due to the missed diagnosis. I filed suit, conducted discovery, and the case proceeded to facilitative mediation. It settled for a confidential sum before trial.

Counsel for Defendant:

Susan Artinian (retired)
Dykema
400 Renaissance Center
Detroit, MI 48243
(313) 568-6800

8. *Rahn v. Grove, M.D., et al.*, 17th Circuit Court, Kent County, Hon. Dennis C. Kolenda, Case No. 98-05264; 1997 – 1999 (approximately).

I represented the Estate of Mr. Rahn in a wrongful death action. I was primary counsel. Mr. Rahn, who had a significant family history of coronary artery disease, began to experience increasingly concerning chest pains and was referred to defendant doctor. Despite an abnormal stress thallium test, during which Mr. Rahn experienced chest discomfort, defendant doctor was dismissive and deemed follow-up at the time unnecessary. Mr. Rahn continued to encounter chest pains multiple times a day, repeatedly sought further medical evaluation, and was referred back to defendant doctor, who was again dismissive. After seven months of consistently seeking evaluation and diagnosis of his chest pains, Mr. Rahn died of a heart attack due to his untreated coronary artery disease. I filed suit, pursued discovery, and discovered that a key witness in defendant's office had lied multiple times in her deposition on both material and insubstantial matters. Her conduct played an important role in Mr. Rahn's lack of treatment. The case settled for a confidential amount and was approved by the trial court.

Counsel for Defendant

Richard K. Grover
Hackney & Grover
0-155 Par 5 Drive
Grandville, MI 49418
(616) 667-9778

9. *Knox v. Reggae Sunsplash et al.*, 17th Circuit Court, Hon. Donald A. Johnston, Case No. 93-82682, 1992 – 1996 (approximately).

I was co-counsel in this wrongful death action. Ms. Knox was walking back to her car after attending a concert in the park where unfettered alcohol consumption was condoned and encouraged by the event planners and their retained security personnel, leading to a drunk driving drag race between two attendees, one of whom struck and killed pedestrians Ms. Knox and her friend, catapulting them into the air and killing them instantly. The case was pursued under negligence and nuisance theories. We took the case to trial and received a $750,000 jury verdict in favor of plaintiff.

Counsel for Defendant Taylor-Cline

Richard A. Marvin
Marvin & Associates
4608 Plainfield Avenue, Northeast
Grand Rapids, MI 49525
(616) 447-1664

Counsel for Defendant Reggae Sunsplash
James J. Phillips
916 Washington Avenue
Bay City, MI 48708
(989) 892-1888

Counsel for Defendant Kent County
Kevin A. Rynbrandt
Varnum, Riddering, Schmidt & Howlett
(Now with Rynbrandt & Associates)
1000 Front Street, Northwest
Grand Rapids, MI 49504
(616) 915-9266

10. *Moon v. Vermont American*, 36th Judicial Circuit Court, Van Buren County, Hon. William C. Buhl, Case No. 1993-0380057; 1994.

This case was referred to me before trial by McDermott, Will & Emery, and I served as sole trial counsel. I defended Vermont American in a product liability lawsuit. The plaintiff sued Vermont American for personal injuries, contending that when he used one of Vermont American's steel cutting blades, the blade fractured into pieces and severed the top of his foot, resulting in a permanent limp. Vermont American maintained that the product was not defective; rather, plaintiff misused the blade. The jury returned a verdict of no cause of action.

Counsel for Plaintiff:

Kevin Haight (as best I can recall, or Bruce Conybeare)
Conybeare Law Office
519 Main Street
St. Joseph, MI 49085
(269) 983-0561

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to the cases I work on as a judge, I serve as an Administrative Judge in District III, Chief Judge Pro Tempore, and Chair of the Attorney Education and Development Committee. I also served for ten years on the Michigan Model Civil Jury Instructions Committee, and I am a co-editor and chapter author of *Michigan Civil Procedure*, published by the Institute of Continuing Legal Education.

As an attorney in private practice, I handled all aspects of the litigation process and amicably resolved just before trial dozens of significant, complex medical negligence and wrongful death claims on behalf of my clients. All of my medical negligence cases required the retention of highly qualified medical experts and the taking of depositions of all defense medical experts, which requiring intensive medical research and evaluation of the applicable standards of care associated with all relevant areas of medical specialty. In addition to the cases I pursued, I also spent time vetting potential claims. In the matters I

investigated and chose not to pursue, which were more than 95% of the potential new clients who sought consultation with my firm, I took the time necessary to explain our medical and legal findings so people would understand the process and have comfort in the decision being made, as there is a difference between medical malpractice and merely an untoward, unexpected result. One significant contribution toward ensuring that our law firm provided exceptional legal services and pursued only meritorious cases was our hiring of a retired Mayo Clinic trained physician on staff. He assisted us in screening cases, finding highly qualified medical experts, and understanding the medicine so we could effectively cross-examine defense medical experts and present the cases in an accessible way to juries.

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.

    None.

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

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    None.

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

    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 transfer my existing conflicts list from the Michigan Court of Appeals to the United States District Court for the Western District of Michigan. My conflicts list is small, and includes my brother, Robert J. Buchanan, who is a lawyer in private practice, although his cases are primarily filed in state courts. My husband is currently an Assistant United States Attorney in the district to which I have been nominated, but he has indicated that he would leave the office within a matter of months and pursue other employment opportunities so that he does not work at an office whose attorneys appear before me.

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

    If confirmed, I would resolve any potential conflict of interest by consulting 28 U.S.C. § 455, the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, and other relevant materials. If necessary, I would also consult with an ethics specialist.

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.

While in private practice, I was appointed by the United States District Court for the Western District of Michigan to serve as pro bono counsel for an incarcerated plaintiff who brought a civil action for deprivation of his rights under 42 U.S.C. § 1983. I also handled two appointed indigent criminal defense cases in the Kent County Circuit Court, although these may have paid nominal fees. I served as a member of the Board of Directors for Migrant Legal Aid for seven years, including as an officer. I served on the Grand Rapids Bar Association's Pro Bono Committee for two years and the Legal Assistance Center Committee for two years. I volunteered for the Young Lawyers Section "Horn-of-Plenty" food and clothing drive, and read weekly for a period of time for Sight Seer, a non-profit radio program for people who are blind, visually impaired, or physically unable to hold or read print material. I volunteered at several bike helmet giveaway events for the Michigan Association for Justice (formerly MTLA). I have provided volunteer services at God's Kitchen Food Distribution Center, Habitat for Humanity, the "Ask a Lawyer" Law Day program, and other public service events through my work, church, and other organizational involvements.

As a judge, I am unable to perform legal services, pro bono or otherwise. I am currently a Fellow of the Michigan State Bar Foundation and the Justice Foundation of West Michigan (the charitable arm of the Grand Rapids Bar Association). I also participate whenever possible in the annual YWCA fundraiser in West Michigan entailing a charity softball game between the area judges and the Women Lawyers Association. Outside the legal arena, I have volunteered for Family Promise of Grand Rapids, which partners with families who are homeless or at risk of becoming homeless by helping them get back on their feet so they can enjoy a stable lifestyle for themselves and their children. My family has also participated in an Adopt-a-Family at Christmas program.

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 July 2017, Senators Debbie Stabenow and Gary Peters issued a press release indicating that they were accepting applications from candidates interested in nomination for a federal judgeship. I submitted my application on July 27, 2017. I interviewed with the Western District Judicial Advisory Committee on November 29, 2017. On February 16, 2018, I interviewed with the White House Counsel's Office.

In January 2021, Senators Debbie Stabenow and Gary Peters issued a press release indicating that they were accepting applications from candidates interested in nomination for a federal judgeship. I submitted my application on January 30, 2021. I interviewed with the Western District Judicial Nominations Committee on March 16, 2021. I was contacted by my senators on April 17 and 19, 2021, regarding my name being forwarded to the White House Counsel's Office. I interviewed with attorneys from the White House Counsel's Office on April 21, 2021, and was contacted by that office on April 23, 2021, and advised that I had been selected for Justice Department vetting. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 13, 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).

   Shalina Deborah Kumar

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

   United States District Judge for the Eastern District of Michigan

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.

   Oakland County Circuit Court
   1200 North Telegraph Road
   Pontiac, Michigan 48341

   Residence: Birmingham, Michigan.

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

   1971; Royal Oak, Michigan

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1993 – 1996, The University of Detroit Mercy School of Law; J.D., 1996
   1989 – 1993, The University of Michigan – Dearborn; B.A., 1993 (with Distinction)

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.

   2007 – present
   Sixth Judicial Circuit, Oakland County
   1200 North Telegraph Road
   Pontiac, Michigan 48341

Circuit Court Judge

2004 – 2007
Weiner & Cox (now Weiner & Assoc.)
3000 Town Center, Suite 1800
Southfield, Michigan 48075
Associate Attorney

2000 – 2004
Sommers, Schwartz, Silver and Schwartz, P.C.
2000 Town Center, Suite 900
Southfield, Michigan 48075
Associate Attorney

1999
Sherbow & Mitchell, P.L.C. (defunct)
3001 Big Beaver Road
Troy, Michigan 48084
Associate Attorney

1998
Lopatin, Miller, et al. (defunct)
3000 Town Center
Southfield, Michigan 48075
Associate Attorney

1997
Karolyn's School of Dance (defunct)
43243 Woodward Avenue
Bloomfield Hills, Michigan 48302
Dance Instructor

1996
Bloomfield Hills Schools
Bloomfield Hills, Michigan 48304
Substitute Teacher

Summer 1994
Evans & Luptak (defunct)
Buhl Building
Detroit, Michigan 48226
Law Clerk

1993
Glamour Shots
Oakland Mall

Troy, Michigan
Makeup Artist

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.

   Oakland County Bar Association Distinguished Public Servant Award (2021)

   Michigan Association for Justice Judicial Excellence Award (2017)

   miindia.com Hall of Fame Award (2015)

   Inaugural State Bar of Michigan Negligence Law Section Trial Judge of the Year Award (2015)

   Asian Indian Women's Association Leadership Award (2012)

   Detroit Business Magazine, Best Oakland County Judges (2012 – present)

   North Oakland County Branch NAACP Preservation of Justice Award (2011)

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, Member (2018 – present)

   Federal Bar Association, Sustaining Member (2011 – present)

   Michigan Association for Justice, Member (1998 – present)
   Executive Board Member and Amicus Committee (2002 – 2007)
   AAJ Diversity Representative (approximately 2005 – 2007)

   Michigan Judges Association, Member (2008 – present)
   Executive Board Member (2011 – present)
   Rules Committee (2011 – 2013)
   Legislative Committee (2013 – present)

Michigan State Bar Professionalism Work Group (2019 – present)

Oakland County Bar Association, Member (2008 – present)

Oakland County Bar Association, Circuit Court Liaison (2013 – 2017)

Oakland County Bar Foundation, Fellow (2008 – 2018)

Oakland County Bar Foundation, Life Fellow (2018 – present)

Oakland County Circuit Court, Adult Treatment Court, Presiding Judge (Female Participants) (2015 – 2021)

Oakland County Circuit Court, Criminal Assignment Committee (2010 – 2018)
Chair (2015 – 2018)

South Asian Bar Association of Michigan, Member (2011 – present)

Urban Drug Court Pilot Project (2013 – 2015)

Women's Bar Association, Member (approximately 2004 – 2007)

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, 1997

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

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

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.

Alliance of Coalitions for Healthy Communities Advisory Board (2021 – present)

Oakland County Bar Association Inn of Court (2008 – 2010)

Restore Foundation-Honorary Board Member (2021 – present)

University of Detroit Mercy Law School Inn of Court (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.

"Supreme Court Abolishes 'Loss of Opportunity to Survive' Claims for Living Plaintiffs, Creating Paradox," MTLA Quarterly ("Michigan Trial Lawyers Association" n.k.a. "Michigan Association of Justice"), Volume 35, No. 3, Summer 2001. 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.

State Bar Professionalism Work Group, Civility Principles. The results of my work on the committee, dated December 16, 2020, are supplied.

July 9, 2019: The State Bar of Michigan's Public Policy Committee letters.

Referenced position statements that the Michigan Judges Association issued with regard to proposed court rule amendments. Copy supplied.

2019 Sixth Judicial Circuit & Oakland County Probate Court Annual Report. Copy supplied.

2019 Oakland County Comprehensive Annual Financial Report. While my name is listed in the Oakland County Financial Report because of my position as Chief Circuit Judge of Oakland County Circuit Court, I did not have any role in drafting, reviewing, or approving it. Copy supplied.

February 20, 2018: The State Bar of Michigan's Public Policy Committee letters. Referenced position statements that the Michigan Judges Association issued with regard to sentence medication and allowing parties to comment on propriety of declaring a mistrial prior to a court's order. Copy supplied.

2018 Sixth Judicial Circuit & Oakland County Probate Court Annual Report. Copy supplied.

2017 Sixth Judicial Circuit & Oakland County Probate Court Annual Report. Copy supplied.

Since 2011 I have served on the Executive Committee of the Michigan Judges Association. The Executive Committee votes on the position that the Michigan Judges Association will take with regard to proposed legislation, proposed court rule changes, and other administrative matters. As a result of these votes, the Executive Committee will sometimes direct the Michigan Judges Association President, or his or her designee, to draft a letter stating Michigan Judges Association positions, and is therefore issued on Michigan Judges Association letterhead. Copies supplied of letters issued on the following dates: February 9, 2021; July 30, 2020; July 1, 2020; June 13, 2017; September 21, 2016; June 1, 2015; August 27, 2014; May 15, 2013.

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.

League of Women Voters Oakland Area: Voter Guide – 2020 November General Election, Circuit Court Judge – 6th Circuit. A copy of voter guide with responses is 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.

May 21, 2021: Speaker, Swearing-In Ceremony, "Spring 2021 New Lawyers Admissions Ceremony," Oakland County Bar Association, Pontiac, Michigan. Video available at https://www.youtube.com/watch?v=Z_aU0jRnX6s.

April 30, 2021: Panelist, "Judges' Panel: Impact of COVID-19, No-Fault Reform, and Beyond," and "Advice from the Bench," The Institute of Continuing Legal Education, Plymouth, Michigan. I sat as a panelist for discussion regarding the impact of COVID-19 and no-fault reform. I have no notes, transcript, or recording. The address for The Institute of Continuing Legal Education is 1020 Greene Street, Ann Arbor, Michigan, 48109.

April 20, 2021: Speaker, Adult Treatment Court Virtual Commencement Ceremony. I gave welcome remarks and an introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

January 26, 2021: Speaker, Adult Treatment Court Virtual Commencement Ceremony. I gave welcome remarks and an introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

December 17, 2020: Oath administrator, Swearing-In Ceremony of County Officials, Oakland County Circuit Court, Pontiac, Michigan. Press coverage supplied and video available at https://www.youtube.com/watch?v=AdhyixZg80I.

November 19, 2020: Oath administrator, Swearing-In Ceremony of County Executive and staff, Oakland County Circuit Court, Pontiac, Michigan. Video available at https://www.youtube.com/watch?v=1ix4IPBB2Yk.

November 13, 2020: Speaker, Swearing-In Ceremony, "Fall 2020 New Lawyers Admissions Ceremony," Oakland County Bar Association, Pontiac, Michigan. I gave welcome remarks and introductions only. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Bar Association is 1760 South Telegraph Road, Suite 100, Bloomfield Township, Michigan 48302.

November 13, 2020: Chief Judge, "Juror Safety Video," Oakland County Circuit Court, Pontiac, Michigan. Video available at https://www.youtube.com/watch?v=kSzKfDuJQw4.

October 7, 2020: Speaker, Adult Treatment Court Virtual Commencement Ceremony. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

June 11, 2020: Speaker, Michigan Association for Justice Virtual 75th Annual Convention virtual seminar. Recording supplied.

June 4, 2020: Speaker, "OCBA Annual Meeting & Awards Ceremony," Oakland County Bar Association, Bloomfield Township, Michigan. I gave the lawyers' oath, but no other remarks were made. I have no notes, transcript, or recording. The address for the Oakland County Bar Association is 1760 South Telegraph Road, Suite 100, Bloomfield Township, Michigan 48302.

April 15, 2020: Speaker, Adult Treatment Court Virtual Commencement Ceremony. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

February 5, 2020: Mock Trial Judge, "Students for Youth Day," Oakland County Circuit Court, Pontiac, Michigan. I presided over a mock criminal proceeding for the students. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Circuit Court is 1200 North Telegraph Road, Pontiac, Michigan 48341.

January 22, 2020: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

November 26, 2019: Speaker, "17th Annual Celebration of the Michigan Adoption Day," Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introductions. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

October 23, 2019: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

September 5, 2019: Panelist, "Discover(y) Changes in Civil Procedure," Oakland County Bar Association, Troy, Michigan. Panel discussion about new discovery rules pursuant to Michigan Court Rule changes. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Bar Association is 1760 South Telegraph Road, Suite 100, Bloomfield Township, Michigan 48302.

August 19, 2019: Oath Administrator, Swearing-In Ceremony of County Executive, Oakland County Circuit Court, Pontiac, Michigan. Video available at https://www.youtube.com/watch?v=h1DfCE7uiLs.

July 25, 2019: Speaker, Investiture of the Honorable Kameshia Gant, Oakland County Circuit Court, Pontiac, Michigan. I gave welcome remarks, introductions, and administered the oath. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Circuit Court is 1200 North Telegraph Road, Pontiac, Michigan 48341.

July 10, 2019: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

April 17, 2019: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

March 14, 2019: Mock Trial Judge, "Techniques for Effective Voir Dire," Michigan Association for Justice, Detroit, Michigan. Mock voir dire was performed. I played the role of judge for a mock jury selection. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Michigan Association for Justice is 325 South Walnut Street, Lansing, Michigan 48933.

February 20, 2019: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

January 24, 2019: Oath Administrator, Investiture of the Honorable Jacob Cunningham, Oakland County Circuit Court, Pontiac, Michigan. I administered the oath of office. I have no notes, transcript, or recording, but press coverage is

supplied. The address for the Oakland County Circuit Court is 1200 North Telegraph Road, Pontiac, Michigan 48341.

January 17, 2019: Oath Administrator, Swearing-In Ceremony, Wayne State University, Detroit, Michigan. I administered the oath of office. I have no notes, transcript, or recording, but press coverage is supplied. The address for Wayne State University is 42 West Warren Avenue, Detroit, Michigan 48202.

January 9, 2019: Speaker, Swearing-in Ceremony, Oakland County Board of Commissioners, Pontiac, Michigan. I delivered the invocation only. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

November 20, 2018: Speaker, "17th Annual Celebration of the Michigan Adoption Day," Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introductions. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

November 2018: Oath Administrator, Swearing-in Ceremony, Oakland County Circuit Court, Pontiac, Michigan. I administered the oath only. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Circuit Court is 1200 North Telegraph Road, Pontiac, Michigan 48341.

October 19, 2018: Panelist, "Michigan Assigned Counsel Fall Training," State Appellate Defender Office, Auburn Hills, Michigan. I was a panelist at a training seminar for criminal defense attorneys discussing the dos and don'ts at the state trial court level. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Michigan State Appellate Defender Office is 200 North Washington Square, Lansing, Michigan 48933.

October 3, 2018: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

September 14, 2018: Speaker, "Constitution Day," Oakland County Circuit Court, Pontiac, Michigan. I gave welcome remarks and introductions. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Circuit Court is 1200 North Telegraph Road, Pontiac, Michigan 48341.

July 11, 2018: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

June 4, 2018: Speaker, "OCBA Annual Meeting & Awards Ceremony," Oakland County Bar Association, Bloomfield Township, Michigan. I gave the lawyers' oath, but no other remarks were made. I have no notes, transcript, or recording. The address for the Oakland County Bar Association is 1760 South Telegraph Road, Suite 100, Bloomfield Township, Michigan 48302.

May 23, 2018: Mock Trial Judge, "Youth in Government Day," Oakland County Board of Commissioners, Pontiac, Michigan. I played the role of judge for mock jury arguments given by students. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

April 4, 2018: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

January 17, 2018: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and introduction of graduates. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

October 4, 2017: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and an introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

July 12, 2017: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and an introduction of graduates. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

May 13, 2017: Honoree, "Judicial Excellence Award," Michigan Association for

Justice, Detroit, Michigan. I gave a brief thank-you speech. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Michigan Association for Justice is 325 South Walnut Street, Lansing, Michigan 48933.

May 2, 2017: Speaker, "OCBA Alternative Dispute Resolution Committee Seminar," Oakland County Bar Association, Bloomfield Township, Michigan. I discussed the benefits of alternative dispute resolution. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Bar Association is 1760 South Telegraph Road, Suite 100, Bloomfield Township, Michigan 48302.

April 5, 2017: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan 48341. I gave welcome remarks and an introduction of graduates. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

January 18, 2017: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and an introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

January 12, 2017: Panelist, "OCBA – U" Oakland County Circuit Court – Civil Cases, Troy, Michigan. I participated in a panel discussion regarding dos and don'ts for civil cases in Oakland County. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Bar Association is 1760 South Telegraph Road, Suite 100, Bloomfield Township, Michigan 48302.

October 5, 2016: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and an introduction of graduates. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

July 13, 2016: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and an introduction of graduates. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

April 29, 2016: Panelist, "ICLE 3rd Annual No Fault Summit," The Institute of Continuing Legal Education, Plymouth, Michigan. I was a panelist for a discussion regarding no-fault laws. I have no notes, transcript, or recording. The address for The Institute of Continuing Legal Education is 1020 Greene Street, Ann Arbor, Michigan, 48109.

April 6, 2016: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and an introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

January 27, 2016: Speaker, Adult Treatment Court Commencement Ceremony, Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. I gave welcome remarks and an introduction of graduates. I have no notes, transcript, or recording. The address for the Oakland County Board of Commissioners is 1200 Court Tower Boulevard, Pontiac, Michigan 48341.

August 6, 2015: Honoree, Inaugural State Bar of Michigan Negligence Law Section Trial Judge of the Year, Bloomfield Township, Michigan. I gave a brief thank-you speech. I have no notes, transcript, or recording, but a press release is supplied. The address for the State Bar of Michigan is 306 Townsend Street, Lansing, Michigan 48933.

November 7, 2014: Panelist, "Judges Panel – Reptile Tactics – Impacts on Court," Michigan Defense Trial Counsel, Troy, Michigan. I participated in a panel discussion about trial strategies. I have no notes, transcript, or recording. The address for the Michigan Defense Trial Counsel is 12690 Grand Willow Drive, Grand Ledge, Michigan 48837.

November 12, 2013: Speaker, "A View from the Bench, Motion and Trial Practice," Association of Defense Trial Counsel, Troy, Michigan. I spoke to lawyers about dos and don'ts for motion and trial practice in state court. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Association of Defense Trial Counsel is 4315 Kiefer Road, Warren, Michigan 48091.

October 18, 2013: Panelist, "Voir Dire Seminar," Michigan Association for Justice, Southfield, Michigan. I was a panelist for a discussion on effective techniques for voir dire. I have no notes, transcript, or recording. The address for the Michigan Association for Justice is 325 South Walnut Street, Lansing, Michigan 48933.

March 14, 2013: Mock Trial Judge, Elementary Mock Trial, Oakland County Bar Association, Pontiac, Michigan. I presided over a mock trial with elementary students. I have no notes, transcript, or recording. The address for the Oakland

County Bar Association is 1760 South Telegraph Road, Suite 100, Bloomfield Township, Michigan 48302.

January 17, 2013: Speaker, Investiture of the Honorable Derek Meinecke, 44th District Court, Royal Oak, Michigan. I gave remarks and administered the judicial oath. I have no notes, transcript, or recording, but press coverage is supplied. The address for the 44th District Court is 400 East Eleven Mile Road, Royal Oak, Michigan 48067.

November 9, 2012: Speaker, "Judicial Address" at the Oakland County Bar Association's New Lawyer Admission Ceremony, Pontiac, Michigan. I gave welcome remarks and introductions. I have no notes, transcript, or recording. The address for the Oakland County Bar Association is 1760 South Telegraph Road, Suite 100, Bloomfield Township, Michigan 48302.

September 29, 2012: Honoree, Asian Indian Women's Association Leadership Award, Farmington Hills, Michigan. I gave a brief thank-you speech. I have no notes, transcript, or recording. The address for the Asian Indian Women's Association is 10946 Fellows Hill Drive, Plymouth, Michigan 48170.

August 30, 2012: Speaker, "Professionalism Orientation Program," Thomas M. Cooley Law School, Auburn Hills, Michigan. I spoke with law students about ethics and professionalism issues they could face as attorneys. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Thomas M. Cooley Law School, Auburn Hills Campus is 2630 Featherstone Road, Auburn Hills, Michigan 48326.

October 19, 2011: Speaker, "Motion-Day Mentor for New Lawyers Committee" Oakland County Bar Association, Pontiac, Michigan. I spoke to new lawyers about good techniques for motion practice. I have no notes, transcript, or recording. The address for the Oakland County Bar Association is 1760 South Telegraph Road, Suite 100, Bloomfield Township, Michigan 48302.

October 7, 2011: Honoree, North Oakland County Branch NAACP Preservation of Justice Award, Pontiac, Michigan. I gave a brief thank-you speech. I have no notes, transcript, or recording. The address for the Northern Oakland County Branch National Association for the Advancement of Colored People is 28 North Saginaw, Suite 910, Pontiac, Michigan, 48342.

September 16, 2011: Mock Trial Judge, "Constitution Day," Oakland County Circuit Court, Pontiac, Michigan. I presided over a mock trial with students. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oakland County Circuit Court is 1200 North Telegraph Road, Pontiac, Michigan 48341.

September 16, 2011: Speaker, "Preparing the Case Manager for Trial,"

Rehabilitation & Insurance Nursing Council, Bloomfield Hills, Michigan. I spoke at a seminar instructing nurse case managers how to prepare their cases for trial, including organizing medical records, meeting with attorneys and treating physicians, and preparing for depositions. I have no notes, transcript, or recording. The address for the Rehabilitation & Insurance Nursing Council is 9833 Elizabeth Lake Road, White Lake, Michigan, 48386.

April 1, 2011: Speaker, "'How To' Workshop," Michigan Association for Justice, Southfield, Michigan. I spoke at a seminar teaching young lawyers trial practice skills. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Michigan Association for Justice is 19390 West 10 Mile Road, Southfield, Michigan 48075.

March 25, 2011: "Co-Captain: Circuit-Probate Court Bench/Bar Conference" Oakland County Bar Association, Orchard Lake, Michigan. I participated in a group discussion regarding circuit court practice tips. I have no notes, transcript, or recording. The address for the Oakland County Bar Association is 1760 South Telegraph Road, Suite 100, Bloomfield Township, Michigan 48302.

May 7, 2010: Panelist, "65th Annual Rapid Fire Seminar," Michigan Association for Justice, Dearborn, Michigan. I was a panelist for a discussion about techniques to improve courtroom skills. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Michigan Association for Justice is 325 South Walnut Street, Lansing, Michigan 48933.

February 4, 2010: Panelist, "Trial Institute," Michigan Association for Justice, Southfield, Michigan. I was a panelist for a discussion regarding techniques to improve trial skills. I have no notes, transcript, or recording. The address for the Michigan Association for Justice is 325 South Walnut Street, Lansing, Michigan 48933.

November 2007: Honoree, Welcome Reception, Michigan Asian Pacific American Bar Association and South Asian Bar Association, Southfield, Michigan. Speech supplied.

October 25, 2007: Speaker, Judicial Investiture, Oakland County Circuit Court, Pontiac, Michigan. I gave a brief thank you speech at my investiture as Circuit Court Judge. Copy of speech, press release, and press coverage supplied. The address for the Oakland County Circuit Court is 1200 North Telegraph Road, Pontiac, Michigan 48341.

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.

Oralandar Brand-Williams, *Strain on Mich. Courts causes them to evolve*, Detroit News, Apr. 7, 2021. Copy supplied.

Tom Kirvan, *Retiring Oakland County judge 'set the bar' for business courts*, Flint-Genesee County Legal News, July 17, 2020. Copy supplied.

Elisha Andserson, *Wayne County official weigh releasing jail inmates vulnerable to coronavirus*, Detroit Free Press, Mar. 19, 2020. Copy supplied.

New ombudspersons to begin duties at Circuit Court, Oakland County Legal News, Nov. 26, 2019. Copy supplied.

Elisha Anderson, *Judge elected after her arrest gets 45 day unpaid suspension*, Detroit Free Press, Apr. 25, 2019. Copy supplied.

Linda Laderman, *At the helm: Chief judge aims to keep Sixth Circuit Court on 'positive' path*, Oakland County Legal News, Feb. 21, 2019. Copy supplied.

Elisha Anderson, *Video shows candidate's arrest; Oakland County judicial hopeful faces charges in drunken driving incident in Royal Oak*, Detroit Free Press, Oct. 10, 2018. Copy supplied.

Paula Tutman, *Oakland County judge weighs in on how juveniles are being punished for making school threats*, ClickOnDetroit.com, Mar. 16, 2018. Copy supplied.

Emma Klug, *Oakland County Circuit Court Focuses on Mental Health, Substance Abuse*, Hour Magazine, July 11, 2017. Copy Supplied.

John Wisely, *Oakland County judge's staff questioned about time off*, Detroit Free Press, May 30, 2017. Copy supplied.

Linda Laderman, *Circuit judge takes over new duties with Oakland County drug court*, Detroit Legal News, Dec. 22, 2015. Copy supplied.

Alan Stamm, *2 Oakland County judges clock out for summer event they skip, Freep finds*, Deadline Detroit, Oct. 16, 2013. Copy supplied (reprinted in multiple outlets).

Jennifer Murray, *Oakland County Judges Unite Behind Unity Slate*, Patch, Sept. 24, 2012. Copy supplied.

Judicial Retirements: The Honorable John J. McDonald, Oakland County Annual Report, (2010). Copy supplied.

Natalie Lombardo, *Here Comes the Judge*, Michigan Lawyers Weekly, Nov. 5,

2007. Copy supplied.

L.L. Braiser, *Bashful? Not in Court*, Detroit Free Press, Oct. 9, 2007. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by Governor Jennifer Granholm to the Oakland County Circuit Court, State of Michigan on August 17, 2007, and sworn in on August 28, 2007. On November 4, 2008, I was elected to a full six-year term on the Oakland County Circuit Court. On January 1, 2010, I became the Chief Judge Pro Tempore for the Oakland County Circuit Court. On November 4, 2014, I was elected to an additional six-year term on the Oakland County Circuit Court. On January 1, 2018, I was appointed by the Michigan Supreme Court as Chief Judge for the Oakland County Circuit Court. On November 3, 2020, I was elected to an additional six-year term on the Oakland County Circuit Court. Michigan circuit courts are courts of general jurisdiction, handling all types of criminal, civil, and juvenile matters.

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

I have presided over approximately 10,548 cases that went to verdict, were resolved through entry of judgment, settled (with a later signed judgment), were nonsuited, and/or were dismissed. Since October 1, 2007, I have presided over 99 jury or bench trials that have gone to verdict or judgment. The percentages below represent the 99 cases that went to trial.

i. Of these cases, approximately what percent were:

jury trials:	82%
bench trials:	18%

ii. Of these cases, approximately what percent were:

civil proceedings:	30%
criminal proceedings:	70%

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

As a state trial court judge, most of my opinions are unreported decisions that the Clerk's Office disseminates to the parties involved in the case and maintains as part of the court record. The following cases are the only opinions of mine for which I was able to locate citations on publicly accessible database:

The list below are my decisions available on Internet databases.

In re Konschuh, 2019 WL 286791 (Mich. Cir. Ct. Jan. 22, 2019)

North Shore Injury Ctr., Inc v. Home-Owners Ins. Co., 2019 WL 11902146 (Mich. Cir. Ct. Sept. 3, 2019)

Smith v. Buerkel, 2019 WL 4732086 (Mich. Cir. Ct. June 5, 2019)

Bennett v. William Beaumont Hosp., 2018 WL 5304196 (Mich. Cir. Ct. Jan. 18, 2018)

Encompass Healthcare, PLLC v. Farm Bureau Ins., 2017 WL 11513163 (Mich. Cir. Ct. Sept. 27, 2017)

Dumas v. Midland Mortgage Co., 2011 WL 11513592 (Mich. Cir. Ct. May 18, 2011)

Woodward v. Trinity Health-Mich., 2009 WL 9390683 (Mich. Cir. Ct. Apr. 29, 2009)

Charter Twp. of Lyon v. Milford Road East Development Ass'n, LLC, 2009 WL 9390662 (Mich. Cir. Ct. Feb. 9, 2009)

Monroe v. William Beaumont Hosp., 2008 WL 7089547 (Mich. Cir. Ct. Nov. 10, 2008)

BC Tile & Marble Co., Inc. v. Multi Building Co., Inc., 2008 WL 9697766 (Mich. Cir. Ct. June 30, 2008)

Walker v. Esordi, 2008 WL 6841727 (Mich. Cir. Ct. June 11, 2008)

Ritchie v. Kozlowski, 2008 WL 2555873 (Mich. Cir. Ct. Jan. 10, 2008)

Curry v. Cornerstone Building Group, Inc., 2008 WL 3889266 (Mich. Cir. Ct. Jan. 9, 2008)

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. *U.S. Bank Trust, N.A. v. Gorge et al.*, Circuit Court Case No. 2017-159368-CH; *U.S. Bank Trust, N.A. v. Gorge et al.*, Circuit Court Case No. 2018-

170130-CH. 2018 Opinion supplied.

In the 2017 action, Plaintiff U.S. Bank Trust, N.A., sued to foreclose on real property owned by Defendant Gorge, both individually and as trustee of The Gorge Family Trust. At issue in the matter was that Defendant Gorge purchased the property—and recorded a warranty deed—in the name of both himself individually and as trustee of The Gorge Family Trust; however, Defendant Gorge executed the note and mortgage in favor of Plaintiff's predecessor solely in his individual capacity. Defendant Gorge therefore argued that Plaintiff had no ability to foreclose on The Gorge Family Trust's interest in the property since it was unencumbered by a mortgage. Plaintiff sought to quiet title or reform the mortgage to include an interest against the trust.

The parties filed cross-motions for summary disposition. I held that there was no evidence that The Gorge Family Trust was a party to the mortgage agreement, and indeed there was actually evidence that Defendant Gorge originally agreed, as part of the mortgage agreement, to provide a warranty deed transferring the trust's interest to himself individually, further evidencing that the trust was never supposed to be encumbered by the mortgage. Furthermore, the fact that Defendant Gorge violated this provision of the mortgage agreement, and never actually transferred the trust's interest, did not give rise to any claim because more than six years (the applicable statute of limitations for breach of contract) had already transpired. Therefore, I granted Defendant Gorge's summary disposition motion, holding that Plaintiff's action was essentially a time-barred breach of contract action. However, I noted that no signed copy of the trust agreement had been produced, and that if the trust did not exist, then Defendant Gorge's entire interest in the real property was properly encumbered by the mortgage.

Plaintiff then filed the 2018 action, through which it contested that The Gorge Family Trust existed and sought a declaratory judgment that there was no such entity. Defendant Gorge filed a motion for summary disposition, asserting that the 2018 action was barred by the doctrines of res judicata and collateral estoppel. I denied this motion, allowing discovery to proceed as to the narrow issue of the existence of The Gorge Family Trust. At the conclusion of discovery, cross-motions for summary disposition were filed once again, and based on the admissible evidence before me, I held that there was no genuine issue of material fact that The Gorge Family Trust never existed, due to the lack of both direct evidence (a signed trust document) and circumstantial evidence (a lack of knowledge on the part of relevant witnesses that the trust existed) that The Gorge Family Trust was ever actually executed. Therefore, because The Gorge Family Trust was not a real entity, full title in the real property vested in Mr. Gorge individually, allowing Plaintiff to proceed with foreclosure of the property. The Court of Appeals affirmed all of my rulings.

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2. *People of the State of Michigan v. Walker*, Oakland County Circuit Court Case No. 2017-262242-FC

This was a case in which the defendant was charged with two counts of armed robbery, four counts of possession of a firearm in the commission of a felony, one count of weapons - firearms - possession by felon, one count of assault with intent to do great bodily harm less than murder, one count of home invasion 2nd degree, and one count of unlawfully driving away an automobile. It was alleged that the defendant, along with a co-defendant, robbed a jewelry store while armed. The allegations were that the owner of the store and his son were tied up in a storeroom and the defendant attempted to shoot the son. I ruled on a number of pretrial motions, including defendant's motion for a separate trial, which I granted. The defendant also filed a motion to quash the mandatory 25-year enhancement, which I denied based on relevant case law. I presided over the trial where the defendant was found guilty of two counts of armed robbery, four counts of possession of a firearm in the commission of a felony, one count of weapons - firearms - possession by felon, and one count of assault with intent to do great bodily harm less than murder. The convictions were upheld on appeal.

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3. *People of the State of Michigan v. King*, Oakland County Circuit Court Case No. 2016-257460-FC

The defendant was charged with first-degree murder, second degree arson, and unlawfully driving away of a motor vehicle. This case involved a man who hired an Uber to drive to the victim home, at which point they got into an altercation, and the defendant strangled and killed the victim. The defendant set the house on fire, drove the victim's car to another location, and called a second Uber to drive him back to Detroit. The second Uber driver was able to provide identification of the defendant at trial. The defendant filed a motion to quash the bind over of the count of first-degree premeditated murder, arguing no evidence showed sufficient probable cause of the premeditation element. The People of the State of Michigan argued that the defendant set two fires in an effort to conceal the crime, which can be evidence of premeditation. I denied the defendant's motion to quash, finding there was a question of fact as to whether there was sufficient evidence to support a finding of first-degree premeditated murder. The jury found the defendant guilty of second-degree murder, second degree arson, and unlawfully driving away of a motor vehicle.

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4. *Bennett and Bennett v. William Beaumont Hospital*, Circuit Court Case No. 2015-150234-NO

This was a general negligence action filed again Beaumont Hospital due to the alleged negligence of a nurse's aide. The nurse's aide tripped over a drawer while walking into the patient's room, falling on the patient's wife who was visiting, causing her severe injury. The defendant moved to dismiss, arguing the case should have been filed as a medical malpractice action, but I denied that motion. The defendant filed a motion in limine to exclude evidence of unsupported damages claiming that some of the plaintiff's injuries were not a result of the fall. I granted in part and denied in part the defendant's motion ruling that plaintiff's

internal medicine disease was not related to the fall but there remained questions of fact as to the reasons for the length of her hospital stay. The case proceeded to trial and the jury found in favor of the plaintiff.

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5. *People of the State of Michigan v. Simkins*, Oakland County Circuit Court Case No. 2014-251044-FC

The defendant was charged with open murder as a result of a physical altercation between the defendant and his neighbor. The defendant shot the neighbor in his leg causing him to bleed out and die. The defendant did call 911 in an effort to provide assistance to the victim, but unfortunately, they could not get to him in time. The defendant filed a motion to quash the district court judge's decision to bind this case over to circuit court on the charge of open murder. The defendant argued that the district court judge's ruling was not supported by sufficient evidence. I denied the defendant's motion to quash, finding that there was sufficient evidence to meet the elements of second-degree murder, which is sufficient probable cause to bind a case over on the charge of open murder. Therefore, I upheld the district court judge's ruling. The case proceeded to trial and the defendant was convicted of voluntary manslaughter.

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6. *People of the State of Michigan v. Young*, Oakland County Circuit Court Case No. 2012-241722-FC

This was a first-degree murder case involving an attack on the co-defendant's father and family members. The defendant, Mr. Young, was alleged to have conspired and participated in the beating death of his co-defendant's father. There were also allegations of beating of the co-defendant's mother and younger brother. There were multiple pretrial motions, including defendant's motion to quash the general information, arguing that there was a lack of evidence to support the district court judge's ruling finding sufficient probable cause to bind the case over to circuit court. I denied the defendant's motion to quash, finding there was sufficient probable cause based on the evidence presented to uphold the district court judge's rulings and bind over of the case. The defendant also filed a motion to suppress his statements to the police while being treated for injuries in the hospital. I denied the motion, ruling that the statements were voluntary, and his state of mind was not affected by any injury. The case went to trial and the jury found defendant guilty of first-degree murder. The conviction was upheld on appeal.

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7. *People of the State of Michigan v. Broadnax*, Oakland County Circuit Court Case No. 2011-237515-FH

This was a case in which the defendant was charged with unlawful imprisonment

and unlawfully driving away an automobile. The case proceeded to trial, and on day three, it was determined that the officer in charge had not turned over all of the discovery material to the assistant prosecutor, who, therefore, had not turned that material over to the defense. I declared a mistrial and dismissed the case with prejudice, as the evidence had been destroyed at that point. It was later determined that the wrong man had been accused and the real perpetrator was ultimately apprehended.

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8. *Logan, Personal Representative of the Estate of Logan v. Providence Hospital and Medical Centers et al.*, Circuit Court Case No. 2010-109887-NH

This was a medical malpractice action. The decedent went into the emergency room with symptoms of a heart attack but was misdiagnosed by the emergency room physical and sent home. Shortly thereafter, he died of a heart attack, leaving his wife and adopted stepchildren. Throughout the pending litigation, I ruled on multiple discovery motions, motions in limine, including granting defendants' motion in limine to exclude plaintiff's claim that defendant Hospital did not fax medical records to another facility and denying defendants' motion in limine to exclude evidence of future wage loss. The case went to trial and the jury rendered a verdict in favor of the plaintiff.

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9. *Nowaczewski, individually as Next Friend of Wyatt and Wyatt v. Consumers Energy Company*, Oakland County Circuit Court Case No. 2009-103148-NO

This was a case involving a gas explosion causing a fire at the plaintiff's home leaving him with severe burns and other injuries. The plaintiff alleged that the gas explosion was due to negligence on the part of Consumers Energy. Throughout the pending litigation, I ruled on multiple pretrial motions, including discovery motions, motions in limine and a motion for summary disposition. The defendant filed a motion for summary disposition claiming that it was not the cause of the explosion in this case. Plaintiff's expert testified that there was a gas leak that was a proximate cause of the explosion. Therefore, I ruled that there was a question of fact as to the cause of the explosion and denied the defendant's motion for summary disposition. I denied plaintiff's motion for sanctions, including default, due to defendant's spoliation of evidence. The defendant did not preserve a pipe that was involved in the gas explosion. I denied plaintiff's request for default, but I reserved ruling on giving a jury instruction regarding an adverse inference. Ultimately, I did not need to reach a decision on jury instructions as the case settled in the middle of trial.

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10. *CVS Pharmacy, Inc. v. Naftaly et al.*, Oakland County Circuit Court Case No. 2008-096365-AS

The plaintiff sought superintending control or a writ of mandamus to compel the state tax commission to issue a valid order and to classify subject parcels of property in a particular manner. I granted the plaintiff's request for a writ of mandamus compelling the state tax commission to issue a valid order deciding the classification of the subject property. The case before me was consolidated for appeal with eight other circuit court cases (*Iron Mountain Information Management, Inc. v. State Tax Comm'n*, 286 Mich. App. 616 (2009), *rev'd sub nom. Midland Cogeneration Venture Ltd Partnership v. Naftaly*, 489 Mich. 83 (2011)). The Court of Appeals reversed all the circuit court rulings, holding that there is no authority to appeal a state tax commission ruling to circuit court for the year of the petition.

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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. *Kresch Revocable Trust v. Gardin, AIG Holdings, and AIG Developments, LLC, and Gardin, AIG Holdings, and AIG Developments, LLC, v. Kresch*, Oakland County Circuit Court Case No. 2020-180954-CH. Opinion supplied.

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2. *Berry v. Wright, Building Official and the City of Walled Lake, a Municipal Entity*, Oakland County Circuit Court Case No. 2020-183135-AW. Opinion supplied.

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3. *William L. Fry v. Templeton Building Co., Mag Insulation, and Icynene Inc. and Templeton Building Co., v. Mag Insulation*, Oakland County Circuit Court Case No. 19-174636-NO. Opinion supplied.

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4. *Glasson v. Innovative Pharmaceutical Solutions Group, LLC, et al.*, Oakland County Circuit Court Case No. 2019-172656-CD. Opinion supplied.

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5. *Elizabeth Trace Condominium Association v. American Global Enterprises, Inc.*, Oakland County Circuit Court Case No. 2018-170537-CH. Opinion supplied.

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6. *U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust v. Gorge, et al.*, Oakland County Circuit Court Case No. 2018-170130-CH. Opinion previously supplied in response to Q13c.

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7. *Brunet v. City of Rochester Hills*, Oakland County Circuit Court Case No. 2018-164764-CZ. Opinion supplied.

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8. *Matoian, M.D., v. RBK Investments, LLC and Etkin Management, LLC, and RBK Investments, LLC v Premier Women's Health and Selective Insurance Company of the Southeast*, Oakland County Circuit Court Case No. 2018-168657-NO. Opinion supplied.

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9. *Michigan Vanguard Properties, LLC v. Scott, and Scott, et al., v. Michigan Vanguard Properties, LLC, et al.*, Oakland County Circuit Court No. 16-154148-CK. Opinion supplied.

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10. *Lynette Duncan as Personal Representative of the Estate of David Duncan, Deceased v. Liberty Mutual Insurance Company*, Oakland County Circuit Court Case No. 2013-135409-NF. Opinion supplied.

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

To my knowledge, and from a search of legal databases, none of my cases has been the subject of a petition for certiorari to the Supreme Court of the United States.

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.

My decisions were reversed in the following cases:

Doa v. Lopez, No. 352980, 2021 WL 2619717 (Mich. Ct. App. June 24, 2021). This was an automobile negligence action with one plaintiff and two defendants. One defendant filed a motion for summary disposition claiming there was no evidence of negligence on its part. Ruling from the bench, I initially granted that motion, however I later granted a motion for reconsideration because the responding party had expert testimony that created a question of fact. The Court of Appeals agreed with my ruling on the motion for reconsideration, but determined that I did not have jurisdiction to decide the motion because one of the parties had already filed an application for leave to appeal. Therefore, the Court of Appeals reversed my original ruling on the motion for summary disposition stating that my opinion on the motion for reconsideration was correct.

Bartalsky v. Osborn, No. 349317, 2021 WL 2171095 (Mich. Ct. App. May 27, 2021). This case involved the transporting of the plaintiff on a stretcher in a hospital parking lot, and plaintiff injured his hip when the stretcher fell over. Plaintiff sued the defendants under theories of ordinary negligence and medical malpractice. The defendants filed a motion for summary disposition arguing that the Michigan Emergency Medical Services Act (EMSA) provides immunity for the acts or omissions of a licensed EMT. Ruling from the bench, I granted the defendants' motion for summary disposition. The Court of Appeals reversed my ruling in a 2-1 decision, holding that the EMSA did not provide immunity for the transport of the patient with no additional medical care.

People v. Williamson, No. 331075, 2019 WL 4230674 (Mich. Ct. App. Sept. 5, 2019) (per curiam). The defendant was convicted of possession with intent to deliver 50 grams or more but less than 450 grams of cocaine on the basis of contraband discovered in his home during a search. The Court of Appeals reversed another judge's ruling regarding the search warrant. After remand to the trial court, the original trial judge recused himself, and the case was transferred to me. Pursuant to the Court of Appeals' first opinion, I held an evidentiary hearing regarding the validity of the search warrant. The issue came down to the detective's credibility. Ruling from the bench, I found that the detective's testimony was credible, and the search warrant was valid. The Court of Appeals reversed my credibility determination and remanded the case for an additional evidentiary hearing and further findings. At that point, the prosecutor chose to dismiss the case.

Lichon v. Morse et al., 327 Mich. App. 375 (2019). This was a case involving a question of whether the matter should be removed to arbitration pursuant to an arbitration agreement. I ruled from the bench in favor of the defendant and ordered the case be removed to arbitration. The Court of Appeals reversed my decision, finding that pursuant to public policy, the arbitration agreement should not apply to the allegations contained in the complaint. The defendant appealed, and that appeal is currently pending before the Michigan Supreme Court.

DC Mex Holdings LLC v. Affordable Land LLC, 320 Mich. App. 528 (2017). In this case, after the judgment was affirmed on appeal, plaintiff filed a request for a writ of nonperiodic garnishment naming the Prudential Insurance Company of America as the garnishee. After the writ of garnishment was entered, the defendant filed a motion to quash it, but I denied that motion. The Court of Appeals reversed my ruling, holding that the cash value of defendant's life insurance policy was exempt from execution or liability to any creditor of the insured. Copy of my written opinion supplied.

Lakin v. Rund, 318 Mich. App. 127 (2016). I granted in part and denied in part the defendant's motion for summary disposition. I denied the defendant's motion for summary disposition on the claim of defamation per se. I held that, because defendant Rund's statement described a criminal battery committed by plaintiff, plaintiff's claims of defamation per se did not require proof of special damages. The Court of Appeals reversed my ruling, concluding that a conviction for battery would not subject an individual, if convicted, to an "infamous punishment," such that a false accusation of battery would not constitute defamation per se. Copy of my written opinion supplied.

Ronnisch Const. Group, Inc. v. Lofts on the Nine, LLC, 499 Mich. 544 (2016). The plaintiff alleged breach of contracts and unjust enrichment and sought foreclosure of a lien. The parties agreed to a stay of the proceedings in circuit court and proceeded with arbitration. Plaintiff later filed a motion in circuit court for confirmation of the arbitration award and sought attorney fees and costs under MCL 570.118(2) of the Construction Lien Act. Defendant argued that plaintiff's motion should be denied because defendant had already satisfied the arbitration award by paying plaintiff, and that no attorney fees were warranted because once the breach of contact claim had been satisfied, the lien foreclosure claim became moot. I denied plaintiff's motion and held, with respect to attorney fees, that because defendant had paid plaintiff the amount owed under the arbitration award and neither the circuit court nor the arbitrator had adjudicated plaintiff's lien foreclosure claim, plaintiff was not a prevailing lien claimant and the circuit court did not have discretion to award attorney fees and costs under the Construction Lien Act. The Michigan Supreme Court reversed my ruling, holding that a party may be awarded reasonable attorney fees if it prevails in arbitration on a related contract claim brought in the same action as its lien foreclosure claim and if it was a lien claimant under the Construction Lien Act when it became the prevailing party. Copy of my written opinion supplied.

Gallagher v. Persha, 315 Mich. App. 647 (2016). Ruling from the bench, I granted defendant's motion for summary disposition, holding that the plaintiff's piercing the corporate veil claim could not be brought as a separate cause of action. The Court of Appeals agreed with the general principle that piercing the corporate veil is an equitable remedy rather than a cause of action but concluded that the rule did not apply in this specific case. The Court of Appeals held that when judgment already exists against a corporate entity, an additional cause of

action is not needed to impose liability against a shareholder or officer if a court finds the necessary facts to pierce the corporate veil.

Morelli v. City of Madison Heights, 315 Mich. App. 699 (2016). The Court of Appeals reversed my ruling from the bench, denying defendant's motion for summary disposition on plaintiff's claim that she was injured after she stepped into a hole on defendant's property. The Court of Appeals held that the defendant did not owe plaintiff a duty to fill in the hole.

MI Ass'n of Home Builders v. City of Troy, 497 Mich. 281 (2014); *MI Ass'n of Home Builders v. City of Troy*, 504 Mich. 204 (2019). In this case, I granted summary disposition in favor of the city, ruling that the court did not have jurisdiction over plaintiff's lawsuit because it failed to exhaust its administrative remedies under MCL 125.1509b before filing its complaint. The Court of Appeals affirmed my decision. The Michigan Supreme Court reversed the Court of Appeals, holding that because the administrative procedures established by MCL 125.1509b do not apply to the city's legislative body, plaintiffs were not required to exhaust their administrative remedies. I issued decisions in both 2012 and 2016. Copies of my written opinions supplied.

Mich. Head & Spine Institute v. State Farm Mut. Auto Ins. Co., 299 Mich. App. 442 (2013). Ruling from the bench, I granted partial summary disposition in favor of plaintiff in this action for reimbursement of medical expenses under the no-fault act, MCL 500.3101 *et seq.* Because defendant's insured executed a release that barred plaintiff's claims for reimbursement, the Court of Appeals reversed and remanded for entry of summary disposition in favor of defendant.

Charter Township of Lyon v. McDonald's USA, LLC, et al., 292 Mich. App. 660 (2011). After conducting a bench trial in a condemnation action, I awarded the intervening defendant compensation for the taking of property and utilities that it spent millions of dollars to develop. The Court of Appeals reversed that decision, holding that the intervening defendant did not have a property interest in the easement taken. The Supreme Court upheld the Court of Appeals. Copy of my written opinion supplied.

CVS Pharmacy, Inc. v. Naftaly, et al., 286 Mich. App. 616 (2009), *rev'd sub nom. Midland Cogeneration Venture Ltd Partnership v Naftaly*, 489 Mich. 83 (2011). In this case, the plaintiff sought superintending control or a writ of mandamus to compel the state tax commission to issue a valid order and to classify subject parcels of property in a particular manner. My case was consolidated for appeal with eight other circuit court cases. *Iron Mountain Information Management, Inc v State Tax Comm'n*, 286 Mich. App. 616 (2009), *rev'd sub nom. Midland Cogeneration Venture Ltd Partnership v Naftaly*, 489 Mich. 83 (2011). The Court of Appeals reversed all of the circuit courts' rulings, holding that there is no

authority to appeal a state tax commission ruling to circuit court for the year of the petition. Copy of my written opinion supplied.

Donigan v. Oakland County Election Commission, 279 Mich. App. 80 (2008). Ruling from the bench, I reversed the Oakland County Election Commission's 2-1 vote approving language in a petition for recall of Representative Donigan, finding that the language was insufficiently clear pursuant to M.C.L. 168.952 (1)(c) because the language was limited to certain portions of a legislative bill for which Representative Donigan voted. I ruled that the petition language was misleading as to the true effect of the bill. The Court of Appeals reversed that decision, holding that the language was sufficiently clear.

My decisions in the following cases were reversed in part:

Fed. Nat'l Mortg Ass'n v. Lagoons Forest Condo Ass'n, 305 Mich. App. 258 (2014). The Court of Appeals affirmed in part and reversed in part my ruling denying summary disposition in favor of plaintiff/counter-defendant and granting summary disposition in favor of defendant/counter-plaintiff. I ruled from the bench that, subsequent to a foreclosure of a condominium unit, plaintiff was liable for association assessments owed to defendant pursuant to MCL 559.211. The Court of Appeals agreed in part finding that the quitclaim transfer the plaintiff obtained was a "sale or conveyance" under MCL 559.211, but that specific provisions of MCL 559.158 governed the circumstances. The Court of Appeals found that the plaintiff owed association assessments that were only due post-acquisition of title to the unit. The Court of Appeals affirmed my ruling granting summary disposition in favor of defendant and dismissing plaintiff's claim for common law slander of title, statutory slander of title, and unlawful reporting of documents with intent to harass or intimidate.

Elser v. Auto Owner's Ins. Co., No. 294068, 2013 WL 1008929 (Mich. Ct. App. Mar. 14, 2013). The Court of Appeals affirmed in part and reversed in part my rulings regarding post-trial motions. The Court of Appeals upheld my denial of defendant's JNOV motion but reversed my decision to reduce plaintiff's award of penalty interest. The Court of Appeals also affirmed my ruling denying plaintiff's motion for attorney fees. Copy of my written opinion supplied.

People v. Brantley, 296 Mich. App. 546 (2012). The Court of Appeals affirmed in part and reversed in part my rulings in this first-degree criminal sexual conduct case. The Court of Appeals affirmed the defendant's conviction for first degree criminal sexual conduct and my imposition of lifetime electronic monitoring as part of his sentence. The Court of Appeals reversed my ruling from the bench assessing ten points for offense variable ten, holding that there was no evidence that the defendant and the victim were involved in a domestic relationship. The case was remanded to me for resentencing.

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.

All the opinions I issue are unpublished. The opinions are electronically filed with the case. As a state trial court judge presiding over a civil and criminal docket, I hear and rule on a large volume of matters. My total number of active cases averages between 450 to 500 cases at any given time. I also hear and rule on matters post-judgment, post-settlement, and post-sentencing. On average, I hear and rule on four summary disposition motions every week. All opinions are electronically filed in the case the opinion pertains to (with counsel receiving those opinions electronically as the attorneys of record). Opinions are sent via United States mail to those individuals who are not listed on the electronic filing system for that case (for example, a defendant in prison who files an in pro per matter).

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 issued any significant opinions on federal or state constitutional issues.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

In determining the necessity or propriety of recusal, I follow the guidance and rules provided by Michigan Court Rule 2.003 and the Michigan Code of Judicial Conduct.

Lennon v. Lennon, Oakland County Circuit Court Case No. 2020-181202-CZ. I recused myself from this matter sua sponte, due to a colleague's spouse being a named party. To avoid the appearance of impropriety, I felt it was best that I recuse myself in the matter.

Gallimore v. Lombardo et al., Oakland County Circuit Court Case No. 2020-180071-NO. I recused myself from this matter sua sponte, due to my judicial assistant's family member being a named party. To avoid the appearance of impropriety, I felt it was best that I recuse myself in the matter.

Newland v. Gossett et al., Oakland County Circuit Court Case No. 2020-179535-NO. I recused myself sua sponte because details of this matter were discussed with me prior to the filing and assignment to me.

Upper Long Lake Estates Corporation v. Palakurthi, Oakland County Circuit Court Case No. 2019-173024-CK. I had to administratively recuse myself from this case after becoming a patient of defendant's wife, who is a physician.

Holland et al. v. Berkshire Hathaway Homestate Ins. Co., Oakland County Circuit Court Case no. 2018-168967-NF. Plaintiff filed a motion to recuse me, arguing I was not being fair to him. I did not rule on the motion and instead administratively recused myself because I learned of issues in the case outside of the court proceedings.

Burgaj et al. v. Romanzi et al., Oakland County Circuit Court Case No. 2016-155616-NM. I recused myself sua sponte because details of this matter were discussed with me prior to the filing and assignment to me.

Constant v. DTE Electric Company, Oakland County Circuit Court Case No. 2016-153631-CZ. The defendant in this matter filed a motion to recuse me from the case because he was unhappy with previous rulings I made against him. I granted his motion for other reasons, specifically that this defendant had a pending action filed against me in federal court at the time. To avoid the appearance of impropriety, I granted his motion to recuse based on the pending lawsuit he filed against me, not for the reasons he argued in his motion.

Cyr Cyr v. Maes, et al., Oakland County Circuit Court Case No. 15-147411-CZ. I recused myself from this matter sua sponte, due to my judicial assistant's family member being a named party. To avoid the appearance of impropriety, I felt it was best that I recuse myself in the matter.

Mort Meisner Associates v. Lewis, Oakland County Circuit Court Case No. 2015-

146915-AV. I recused myself sua sponte due to a previous business relationship I had with one of the parties. To avoid the appearance of impropriety, I felt it was best that I recuse myself in the matter.

Bafna v. Brynmawr Condominium Association, Oakland County Circuit Court Case No. 14-142789-CZ. The defendant in this matter filed a motion to recuse me. He also filed a Judicial Tenure Complaint against me. His behavior in the court had become so volatile that I felt I could no longer be fair to him, and I therefore granted his motion to recuse.

Treece-Wagner, Individually and as Next Friend of Wagner and Wagner v. Henry Ford Health System, Oakland County Circuit Court Case No. 2013-135268-NH. The defendant in this matter filed a motion to recuse me in this case because the plaintiff's attorney was my former spouse. At this point, the plaintiff's attorney and I had been divorced for over eight years. I researched the Michigan Court Rules and Michigan Code of Judicial Conduct regarding this issue and found no guidance with respect to former spouses practicing in my court. I discussed the issue with my Chief Judge, who also happened to be on the Judicial Tenure Commission and decided there was no requirement that I recuse myself. I felt I could be unbiased and could treat everyone fairly. Therefore, I denied the motion. The defendant appealed that ruling to the Chief Judge, who upheld my ruling. I did, however, agree to administratively transfer the case to another judge who had a previous filing of the same matter assigned to him, so it was properly before that judge.

Dyke, as Personal Representative of the Estate of Ofoegbu v. Orchard Living View, Inc., Oakland County Circuit Court Case No. 2013-134510-NO. I recused myself from this matter sua sponte, due to my familiar relationships with the parties involved. To avoid the appearance of impropriety, I felt it was best that I recuse myself in the matter.

DTE Electric Company v. Constant, Oakland County Circuit Court Case No. 2013-132055-CH. The defendant in this matter filed a motion to recuse me from the case because he was unhappy with previous rulings I made against him. I granted his motion for other reasons, specifically that this defendant had a pending action filed against me in federal court at the time. To avoid the appearance of impropriety, I granted his motion to recuse based on the pending lawsuit he filed against me, not for the reasons he argued in his motion.

Almonrode v. Sullivan, Ward, Asher & Patton, P.C., et al., Oakland County Circuit Court Case No. 11-122425-CZ. Prior to the case being assigned to me, a lawyer who was a member of the defendant law firm discussed with me some details about the case. When the case was subsequently assigned to me, I recused myself sua sponte because I had previous knowledge of the issues involved.

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.

Elected Sylvan Lake City Council (1997 – 1998)
Unsuccessful candidacy for Sylvan Lake City Council (1996)

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 a handful of occasions, I have, consistent with Michigan's Code of Judicial Conduct, endorsed my judicial colleagues for reelection. On a couple of occasions, I have also endorsed for election lawyers who I felt met the qualifications to serve.

With the exception of my re-election campaigns in 2008, 2014, and 2020, I never held a position in a political campaign. I did participate in fundraising activities for then-Governor Jennifer Granholm in the 2005 to 2007 timeframe prior to becoming a judge.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a clerk to a judge.

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

I have not practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

1998 – 1999
Lopatin, Miller, et al. (defunct)

3000 Town Center
Southfield, Michigan 48075
Associate Attorney

1999 – 2000
Sherbow & Mitchell, P.L.C. (defunct)
3001 Big Beaver Road
Troy, Michigan 48084
Associate Attorney

2000 – 2004
Sommers, Schwartz, Silver and Schwartz, P.C.
2000 Town Center, Suite 900
Southfield, Michigan 48075
Associate Attorney

2004 – 2007
Weiner & Cox (now Weiner & Assoc.)
3000 Town Center, Suite 1800
Southfield, Michigan 48075
Associate Attorney

2007 – present
Sixth Judicial Circuit, Oakland County
1200 North Telegraph Road
Pontiac, Michigan 48341
Circuit Court Judge

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have 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.

After I was sworn in as an attorney in June of 1997, I was not employed but shadowed criminal attorneys, occasionally standing in for them on the record.

As an associate attorney at Lopatin, Miller, et al. from 1998 to 1999, I represented clients in personal injury matters. I conducted depositions, handled motion practice, and participated in trial work.

As an associate attorney at Sherbow & Mitchell, P.L.C. from 1999 to 2000, I represented defendants in both civil personal injury and criminal matters. I conducted depositions and handled motion practice, criminal arraignments, pre-trials, and sentences. I also represented clients in workers compensation matters.

As an associate attorney at Sommers, Schwartz, Silver and Schwartz, P.C. from 2000 to 2004, I represented clients in medical malpractice cases. I handled depositions, prepared discovery documents, argued all forms of motions including motions for summary disposition and other pre-trial motions, and conducted jury trials.

As an associate attorney at Weiner & Cox (now Weiner & Associates) from 2004 to 2007, I represented clients in medical malpractice cases. I handled depositions, prepared discovery documents, argued all forms of motions including motions for summary disposition and other pre-trial motions, and conducted jury trials.

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

For the vast majority of my career as an attorney prior to becoming a judge, I represented injured clients in medical malpractice actions. My entire legal career as a lawyer was in the field of personal injury law, with the exception of a few criminal defense 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.

i. Indicate the percentage of your practice in:
   1. federal courts: <1%
   2. state courts of record: 98%
   3. other courts: 0%
   4. administrative agencies: <1%

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

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As an attorney, I tried approximately ten cases to verdict, judgment, or final decision in Michigan state courts. Of these cases, I tried seven cases as associate counsel and three cases as sole 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.

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. *The Estate of Wright v. St. Joseph Mercy Health System et al.* (Washtenaw County Circuit Court, Judge Timothy Connors, 2007).

This case involved a wrongful death action alleging medical malpractice against the defendants. I prepared discovery responses, participated in depositions, and handled pretrial motions. I represented the plaintiff as associate counsel. The case settled for a confidential amount.

Dates of Representation: approximately April 2006 – April 2007

Co-counsel

Cy Weiner
Weiner & Associates
3000 Town Center, Suite 1800
Southfield, MI 48009

(248) 351-2200

Counsel for Defendant

Cyril Empey
2929 Plymouth Road, Suite 250
Ann Arbor, MI 48105
(734) 332-6010

2. *The Estate of Barry v. Henry Ford Hospital* (Wayne County Circuit Court, Judge Sheila Ann Gibson, 2006).

This case involved the death of a 55-year-old man from lung cancer. It was alleged that physicians at Henry Ford Hospital failed to timely diagnose the cancer. I prepared discovery responses, participated in depositions, and handled pretrial motions. I represented the plaintiff as associate counsel. The case settled for a confidential amount.

Dates of Representation: approximately March 2006 – June 2007

Co-counsel

Cy Weiner
Weiner & Associates
3000 Town Center, Suite 1800
Southfield, MI 48009
(248) 351-2200

Counsel for Defendant

Anthony Paradiso
2151 Livernois Road, Suite 300
Troy, MI 48083
(313) 965-4510

3. *The Estate of Simpson, Deceased, by Simpson, Personal Representative v. Cornerstone Health Services, P.C. et al.* (Macomb County Circuit Court, Judge Deborah Servitto, 2006).

This was a medical malpractice action involving the death of a 34-year-old man. He presented to his family physician and was seen by the nurse practitioner with complaints of left arm pain, chest tightness and jaw pain. He was diagnosed with a gastrointestinal problem. A few months later, Mr. Simpson presented to his family physician with a request for clearance to exercise at work. The physician cleared him for exercise without a cardiac work up. A few months later, Mr. Simpson died from a cardiac arrest while playing basketball. I represented the plaintiff along with Cy Weiner. I litigated and prepared the case for trial, including all discovery matters, depositions, and motion

practice. Mr. Weiner and I shared the duties during the trial. The jury found the physician and nurse practitioner negligent and awarded $3 million to the decedent's estate.

Dates of Representation: approximately January 2006 – December 2006

Co-counsel

Cy Weiner
Weiner & Associates
3000 Town Center, Suite 1800
Southfield, MI 48009
(248) 351-2200

Counsel for Defendants

Steve Cheolas (P32178)
10 South Main, Suite 200
Mt. Clemens, MI 48043
(586) 493-4410

4. *The Estate of Moss v. Henry Ford Hospital and Medical Center* (Wayne County Circuit Court, Judge Susan Borman, 2005).

This case involved the death of a 70-year-old woman as a result of alleged negligence on the part of hospital staff while preforming dialysis on Ms. Moss. I prepared discovery responses, participated in depositions, and handled pretrial motions. I represented the plaintiff as associate counsel. The case settled for a confidential amount.

Dates of Representation: approximately July 2005 – July 2006

Co-counsel

Cy Weiner
Weiner & Associates
3000 Town Center, Suite 1800
Southfield, MI 48009
(248) 351-2200

Counsel for Defendant

Lee Stevens
3001 West Big Beaver Road, Suite 200
Troy, MI 48084
(248) 645-9400

5. *The Estate of Devoll v. Meadows* (Wayne County Circuit Court, Judge John H. Gillis, 2005).

This case involved the death of a 46-year-old woman following oral surgery. It was alleged that the nurse was negligent in providing an overdose of pain killers resulting in Ms. Devoll's death. I prepared discovery responses, participated in depositions, and handled pretrial motions. I represented the plaintiff as associate counsel. The case settled for a confidential amount.

Dates of Representation: approximately May 2005 – March 2006

Co-counsel

Cy Weiner
Weiner & Associates
3000 Town Center, Suite 1800
Southfield, MI 48009
(248) 351-2200

Counsel for Defendant

James Farrell
525 West Ottawa Street, Floor 4
P.O. Box 30217
Lansing, MI 48933
(517) 335-3055

6. *The Estate of Vovk v. Providence Hospital et al.* (Oakland County Circuit Court, Judge Rudy Nichols, 2005).

This case involved a wrongful death action alleging medical malpractice against the defendants. I prepared discovery responses, participated in depositions, and handled pretrial motions. I represented the plaintiff as associate counsel. The case settled for a confidential amount.

Dates of Representation: approximately April 2004 – June 2005

Co-counsel

Cy Weiner
Weiner & Associates
3000 Town Center, Suite 1800
Southfield, MI 48009
(248) 351-2200

Counsel for Defendant

Robert Siemion
One Towne Square, Suite 1400
P.O. Box 5068
Southfield, MI 48086
(248) 357-1400

7. *The Estate of Hicks v. Almeda et al.* (Wayne County Circuit Court, Judge John H. Gillis, 2004).

This case was a wrongful death action alleging medical malpractice against the defendants for failing to diagnose a diabetic condition in the decedent. I handled discovery matters, depositions, and pretrial motions. I represented the plaintiff and was co-counsel at trial. The jury awarded a $1.5 million verdict for the plaintiff.

Dates of Representation: approximately March 2004 – April 2004

Co-counsel

Cy Weiner
Weiner & Associates
3000 Town Center, Suite 1800
Southfield, MI 48009
(248) 351-2200

Counsel for Defendant

Noreen Slank
4000 Town Center, Suite 909
Southfield, MI 48075
(248 355-4141

8. *Evans, Personal Representative of the Estate of Evans v. Grannell* (Berrien County Circuit Court, Judge John N. Fields, 2003).

In this case, a diabetic woman presented to the emergency department with an injury to her hand after sustaining a fall at home. After being admitted to the hospital, the orthopedic physician diagnosed the woman with reflex sympathetic dystrophy in her hand despite signs of infection. The physician concluded the woman was feigning her pain, and the infection went untreated. She was eventually transferred to another hospital where the infection was diagnosed but, by that time, the infection had spread throughout her body and she died as a result. The second hospital said if the infection had been diagnosed by the orthopedic physician at the first hospital, it could have been successfully treated. I litigated this case handling all discovery matters, pretrial motions and preparation for trial. I represented the plaintiff and was sole counsel at trial.

Dates of Representation: approximately 2002 – 2003

Counsel for Defendant

Steve Berry (P26398)
170 College Avenue, Suite 320
Holland, MI 49423
(616) 796-9600

9. *Donohoe v. Allen* (Livingston County Circuit Court, Judge Stanley J. Latrielle, 2002).

In this case, the plaintiff had an orthopedic foot injury which was incorrectly positioned in a cast. Despite multiple complaints to her physician, he did not diagnose or correct the problem. Due to the incorrect setting of the bone, the bone did not heal properly, and the woman suffered permanent damage to her ankle. I litigated and prepared the case for trial, including handling all discovery matters, depositions and pretrial motions. I represented the plaintiff and was sole counsel at trial.

Dates of Representation: approximately 2002

Counsel for Defendant

Steve McGraw (P26568)
500 Woodward Avenue, Suite 2500
Detroit, MI 48226
(313) 961-0200

10. *Shuttleworth and Shuttleworth v. Miller et al.* (Oakland County Circuit Court, Judge Edward Sosnick, 2000).

Plaintiff, Mr. Shuttleworth, was severely injured in an automobile accident requiring two back surgeries along with other significant treatment. I was sole counsel and litigated the case in its entirety, including handling all discovery matters, pretrial motions and case evaluation. The matter settled for $1.1 million after two facilitations.

Dates of Representation: approximately February 2000 – January 2002

Counsel for Defendants

Gregory Gromek (P30164)
38505 Woodward Avenue, Suite 2000
Plunkett & Cooney, PC
Bloomfield Hills, MI 48304
(248) 901-4030

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 Chief Judge of the Oakland County Circuit Court for over three years, and my responsibilities have included managing the second largest trial court in the state during the pandemic, which required me to take unprecedented actions such as training the judges to handle all matters remotely, developing COVID safety guidelines, and increasing the budget to allow for more technology for remote work.

As a judge, I play a very active role in all matters, and have presided over many complex civil and criminal cases and spend a significant amount of time resolving these matters. I have presided over the Adult Treatment Court for over five years, handling both the substance abuse and mental health dockets to help treat and divert defendants from jail. As Chief Judge, I made changes to our court and budget to promote fair and equal access to justice, including significantly raising the indigent criminal defense trial and appellate attorney fees. I also included compensation for those attorneys for more contact and interaction with their clients to promote effective assistance of counsel.

Outside the courtroom, I participate in the Detroit Mercy Law Inn of Court Program, and I have participated in the past in the Oakland County Bar Association Inn of Court Program. Both of these programs are designed to teach litigation skills to law students. I am active in the Michigan Judges Association, host students for visits to the courthouse, and speak at various seminars and events for the Michigan Association for Justice, the National Business Institute, I.C.L.E., Cooley Law School and other groups.

As an attorney for 11 years, I handled complex civil litigation matters representing the rights of injured parties, most of which settled prior to trial.

I have never acted or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I taught at the University of Detroit Mercy Law Inn of Court from September 2018 to April 2019, from September 2019 to April 2020, and from September 2020 to April 2021. The course focused on teaching young lawyers comprehensive legal skills including client intake, discovery preparation, conducting depositions, preparing and arguing motions, opening/closing statement, direct and cross examination of witnesses, motions in limine, etc.

I also taught at the Oakland County Bar Association Inn of Court from September 2008 to April 2009 and from September 2009 to April 2010. The course focused on teaching young lawyers comprehensive legal skills from client intake, discovery preparation, conducting depositions, preparing and arguing motions, opening/closing statement, direct and cross examination of witnesses, motions in limine, etc.

Copies of available syllabi supplied.

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

    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 do not have any plans, commitments, or agreements to pursue outside employment.

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

    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 anticipate any potential conflicts-of-interest involving family members or other persons, parties, categories of litigation, or financial arrangements if confirmed to the position to which I have been nominated. If confirmed, I will

recuse myself from any matter where I have ever played any role, either as judge or as advocate. Generally, I will evaluate any other real or potential conflict of interest on a case-by-case basis and determine appropriate action, including recusal, with the input of parties and after consulting the applicable canons of judicial ethics.

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

If confirmed, I will carefully review and address any real or potential conflicts of interest by reference to 28 U.S.C. § 455 and all applicable canons of the Code of Conduct for United States Judges.

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.

During my years as an attorney, I worked with the Michigan Association for Justice for Bike Helmet Events providing helmets, training, and education without cost for children. I volunteered at Thanksgiving to participate in Meals on Wheels providing meals to those who could not afford a Thanksgiving meal.

Since taking the bench, I have made myself available to participate in many charitable events such as Haven, JVS (Jewish Vocational Services), and Grace Centers of Hope. Also, I was on the Steering Committee for the Oakland County Council Against Domestic Violence. I participate in food drives, I am currently on the Advisory Board of the Alliance of Coalitions for Healthy Communities, I volunteer my time for the Detroit Mercy Law Inn of Court Program and previously for the OCBA Inn of Court Program, and I volunteer my time to preside over the Adult Treatment Court.

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 9, 2021, I submitted my application to the office of Senator Debbie Stabenow. On March 2, 2021, I received an email from the chair of the Advisory

Committee asking me to an interview with the committee. On March 10, 2021, I had my interview with the Advisory Committee. On April 19, 2021, I received a phone call from Senator Gary Peters informing me that my name had been sent to the White House for consideration. Later that day, I received an email from the White House Counsel's Office scheduling my interview with them, which took place on April 21, 2021. Since April 24, 2021, I have been in contact with the Office of Legal Policy at the Department of Justice. On July 13, 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).

   Armando Omar Bonilla

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

   Judge, United States Court of Federal Claims

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: Capital One Financial Corporation
   1680 Capital One Drive
   McLean, Virginia 22102

   Residence: Washington, District of Columbia

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

   1967; 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.

   1989 – 1992, Seton Hall University School of Law; J.D. (magna cum laude), 1992

   Summer 1989, Wake Forest University School of Law, no degree received
   Council on Legal Education Opportunity Fellow (pre-law summer institute)

   1985 – 1989, West Virginia University; B.A., 1989

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2018 – present
Capital One Financial Corporation
1680 Capital One Drive
McLean, Virginia 22102
Vice President, Ethics & Investigations

2017 – 2018
United States Department of Justice
United States Marshals Service, Office of General Counsel
1215 South Clark Street
Arlington, Virginia 22202
Associate General Counsel

2010 – 2017
United States Department of Justice
Office of the Deputy Attorney General
950 Pennsylvania Avenue, Northwest, 4th Floor
Washington, District of Columbia 20530
Associate Deputy Attorney General (2014 – 2017)
Senior Counsel to the Deputy Attorney General (2010 – 2014)

2002 – 2010
United States Department of Justice
Criminal Division, Public Integrity Section
Bond Building, 12th Floor
1400 New York Avenue, Northwest
Washington, District of Columbia 20530
Trial Attorney

2001 – 2002
United States Department of Justice
Criminal Division, Asset Forfeiture and Money Laundering Section
Bond Building, 2nd Floor
1400 New York Avenue, Northwest
Washington, District of Columbia 20530
Trial Attorney

1994 – 2001
United States Department of Justice
Civil Division, Commercial Litigation Branch
1100 L Street, Northwest, 12th Floor
Washington, District of Columbia 20530
Trial Attorney

1996 – 1998 (academic years)
The George Washington University Law School

2000 H Street, Northwest
Washington, District of Columbia 20052
Adjunct Professor of Law, Legal Research and Writing

1992 – 1994
United States District Court for the District of New Jersey
Chambers of the Honorable Garrett E. Brown, Jr.
Clarkson S. Fisher Building & U.S. Courthouse
42 East State Street
Trenton, New Jersey 08608
Law Clerk to Judge Garrett E. Brown, Jr., United States District Judge

1990 – 1992 (academic years)
Seton Hall University School of Law
One Newark Center
Newark, New Jersey 07102
Teaching Assistant (Contracts I & II) to Professor Susan Block-Lieb

Summer 1991
Clapp & Eisenberg, PC
One Newark Center
Newark, New Jersey 07102
Summer Associate

1989 – 1990 (summer and holiday breaks)
Wharfside-Chef's International
101 Channel Drive
Point Pleasant, New Jersey 08724
Server

1987 – 1989 (summer and holiday breaks)
First DeWitt Savings & Loan
1161 Burt Tavern Road
Bricktown, New Jersey 08724
Teller

Uncompensated Affiliations:

2021 – present
So Others Might Eat (SOME)
71 O Street, Northwest
Washington, District of Columbia 20001
Member, Board of Directors

2016 – present
Holy Trinity School (Georgetown) School Advisory Board

1325 36th Street, Northwest
Washington, District of Columbia 20007
President (2017 – 2018)
Vice President (2016 – 2017)

2001 – 2003
The Castle on Logan Circle Homeowners Association
1306 O Street, Northwest
Washington, District of Columbia 20005
President

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I did not serve in the military. I registered for the selective service upon turning 18.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Attorney General's Award for Distinguished Service (2011)

   Special Commendation, United States Department of State, Office of the Inspector General, Office of Investigation (2009)

   Assistant Attorney General's Award (Criminal Division) for Ensuring the Integrity of Government (2006 & 2008)

   Special Commendation Award, Civil Division, United States Department of Justice (2000)

   Federal Bar Association Younger Federal Lawyers Award (1999)

   Letters of Commendation for Extraordinary Trial Work from Attorney General Janet Reno and FBI Director Louis J. Freeh (1998)

   Letter of Commendation for Extraordinary Litigation Skills, United States Air Force (1998)

   Attorney General's Honors Program (1994)

   Seton Hall University School of Law
   Graduated magna cum laude (1992)
   Editor-in-Chief, Seton Hall Constitutional Law Journal (1991 – 1992)

Seton Hall Interschool Appellate Moot Court Competition, Winning Team, Best Oralist and Best Brief (1991)

Council on Legal Education Opportunity Fellow (Summer 1989)

West Virginia University
Greek Man of the Year (1989), award for distinguished achievement in academics, campus leadership, and community service
"Mr. Mountaineer" (second), award for academic achievement and extracurricular involvement (1989)
President, Pi Kappa Phi (Alpha Rho Chapter) national social fraternity (1986 – 1989), National Student-of-the-Year (finalist 1988)
Mountain Honorary (top 25 student leaders) (1987 – 1989)
Drum Major/Field Conductor, West Virginia University Marching Band (1985 – 1989)
Order of Omega, Greek leadership fraternity (1987 – 1989)
Kappa Kappa Psi and Tau Beta Sigma (Northeast District), national honorary band fraternities (1986 – 1989)

Eagle Scout, Boy Scouts of America (n/k/a Scouts BSA) (1985)

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.

Attorney General's Honors Program Hiring Committee (2009 – 2016)

Edward Bennett Williams Inn of Court (2011 – 2017)
Barrister

Federal Interagency Drug Endangered Children Task Force (2011 – 2012)

Health Care Fraud Prevention and Enforcement Action Team (2010 – 2011)

Hispanic National Bar Association (2013 – present)

Hispanic Bar Association of the District of Columbia (2011 – present)
Endorsements Committee (2013 – 2014)

Identity Theft Steering Committee, implementing the recommendations included in the 2008 President's Identity Theft Task Force Report (2010 – 2014)

International Criminal Police Organization (INTERPOL) Evolving Fund Working Group (2012 – 2013)

Justice Prisoner and Alien Transportation System Executive Committee (2010 – 2015)

National Commission on Forensic Science (2013)

President's Task Force on 21st Century Policing (2014 – 2015)

President's Task Force on Puerto Rico (2012 – 2014)

Protective Services Working Group (2010 – 2012)

Seton Hall University School of Law Class of 1992 Reunion Committee (2007 & 2012)

United States Court of Federal Claims Bar Association (1994 – 2001, 2013 – 2017)

United States Department of Homeland Security Maritime Migration Senior Oversight Group (2010 – 2012)

United States Department of Justice (Criminal Division) Diversity Committee (2010)

United States Department of Justice Investment Review Board (2010 – 2012)

United States Department of Justice Law Enforcement Operations Chiefs Working Group (2014)

United States Department of Justice Priority Goal: Violent Crime
Team Lead (2013 – 2014)

United States Department of Justice Prison Rape Elimination Act Working Group (2014)

White House Opioid Task Force (2017)

White House Public Safety Working Group (2010 – 2011)

White House Department of Veterans Affairs Telehealth Working Group (2017)

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
District of Columbia, 2011

There have been no lapses in membership. In addition, although the Pennsylvania Board of Bar Examiners notified me on November 13, 1992, that I passed the July 1992 Pennsylvania bar examination, I never submitted the paperwork to be officially sworn in as a member of that bar.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2007
United States Court of Appeals for the First Circuit, 2003
United States Court of Appeals for the Third Circuit, 2006
United States Court of Appeals for the Fifth Circuit, 2003
United States Court of Appeals for the Federal Circuit, 1994
United States District Court for the Northern District of Georgia, 2006
United States District Court for the District of Nevada, 2005
United States District Court for the District of Puerto Rico, 2003
United States District Court of the Virgin Islands, 2003
United States Court of Federal Claims, 1994

To the best of my knowledge and belief, there have been no lapses in my membership in any of these courts.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Holy Trinity School (Georgetown) Fathers Club (2010 – present)

Holy Trinity School (Georgetown) School Advisory Board (2016 – present)
President (2017 – 2018)
Vice President (2016 – 2017)

So Others Might Eat (SOME) (2021 – present)
Member, Board of Directors

The Castle on Logan Circle Homeowners Association (2001 – 2003)
President

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.

With James M. Kinella, "Military Pay," published in *The United States Court of Federal Claims: A Deskbook for Practitioners* (4th ed. Apr. 1998). Copy supplied.

Municipal Noise Ordinance Imposing Mandatory Adherence to Sound Amplification Guidelines Constitutes a Valid Time, Place, and Manner Restriction on Protected Speech, 1 Seton Hall Const. L.J. 451 (1991). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

During my tenure with the United States Department of Justice Office of the Deputy Attorney General, I served as the interim Team Lead of the "Violent Crime" Agency Priority Goal from December 2013 to February 2014. While I did not draft any publications, I did approve two website pages:

Team Lead, Department of Justice Priority Goal: Violent Crime (FY 2015) ("Goal Overview" and "Performance Indicators"). Copies 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 24, 2014, I testified before the United States Senate Committee on the Judiciary in connection with my then pending nomination to serve as a Judge on

the United States Court of Federal Claims. Transcript and responses to written questions supplied.

United States Department of Justice Statement Regarding Inspector General Report on the *Handling of Former Known or Suspected Terrorists Admitted into the Federal Witness Security Program* (May 16, 2013). Copy supplied.

Public Summary: Department of Justice's Response to the Office of the Inspector General's Draft Interim Audit Report entitled *Department of Justice's Handling of Known or Suspected Terrorists Admitted into the Federal Witness Security Program* (Apr. 19, 2013) (document dated May 6, 2013; publicly released on May 16, 2013). Copy supplied.

United States Department of Justice's Scientific and Research Integrity Policy (draft published Apr. 3, 2012; final published Aug. 1, 2013). Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

April 13, 2021: Panelist, "Diversity and Professional Development Topics for Latino Lawyers in the Washington DC Legal Market," co-sponsored by the District of Columbia Bar Association and the Hispanic Bar Association of the District of Columbia (Virtual Appearance). I participated in a panel discussion on diversity and professional development for Latinx lawyers in the District of Columbia legal market. I have no notes, transcript, or recording. The address for the District of Columbia Bar Association is 901 4th Street, Northwest, Washington, District of Columbia 20001.

October 2, 2019: Panelist, "Catching Bad Guys," Capital One Risk Summit, Chantilly, Virginia. I participated in a panel discussion addressing recent trends in internal and external financial fraud in the financial services industry. I have no notes, transcript, or recording. The address for Capital One Financial Corporation is 1680 Capital One Drive, McLean, Virginia 22102.

February 27, 2020, September 2019 [date unknown], September 2017 [date unknown], September 28, 2015, February 2014 [date unknown]: Guest Speaker, "Law and Lawyering in the Nation's Capital: Main Justice and Legal Policy Making," University of California Law School, Washington, District of Columbia. I addressed law students about policy making and my career in public

service and, in 2019 and 2020, my transition to the private sector. Syllabus supplied for the September 28, 2015 class. I have no other notes, transcripts, or recordings. The address for the University of California-Washington Center is 1608 Rhode Island Avenue, Northwest, Washington, District of Columbia 20036.

September 10, 2019: Panelist, "Latinos in Leadership," Capital One Legal Department Hispanic Heritage Month Observation Program, Richmond, Virginia. I participated in a panel discussion about the experience of being Latinx in corporate America. I have no notes, transcript, or recording. The address for Capital One West Creek is 15075 Capital One Drive, Richmond, Virginia 23238.

November 2018 [date unknown]: Guest Speaker, "Federal Government Lawyering," Columbia Law School, Washington, District of Columbia. I addressed law students about policymaking and my career in public service and transition to the private sector. I have no notes, transcript, or recording. The address for the University of California-Washington Center is 1608 Rhode Island Avenue, Northwest, Washington, District of Columbia 20036.

November 18, 2016: Speaker, "Integrity in Public Office," 11th National Biennial Institute for Newly Elected Officials, National Harbor, Maryland, hosted by the National Association of Latino Elected and Appointed Officials (NALEO) Education Fund. Speech supplied.

October 14, 2014: Keynote Speaker, "Hispanics: A Legacy of History, a Present of Action, and a Future of Success," United States Department of Justice Hispanic Heritage Month Observance Program and Celebration, Washington, District of Columbia. Speech and press coverage supplied.

April 18, 2013: Panelist, "Representing Clients before Congress," Edward Bennett Williams Inn of Court, Washington, District of Columbia. I participated in a panel discussion about Congressional hearings and investigations. I have no notes, transcript, or recording. The Edward Bennett Williams Inn of Court is hosted at the United States District Court for the District of Columbia, 333 Constitution Avenue, Northwest, Washington, District of Columbia 20001

April 2011 [date unknown]: Keynote Speaker, Samuel J. Heyman Public Service Lecture, Seton Hall University School of Law, Newark, New Jersey. I spoke to law students and faculty about my career in public service. I have no notes, transcript, or recording, but press coverage is supplied. The address for Seton Hall University School of Law is One Newark Center, Newark, New Jersey 07102.

October 27, 1999: Panelist, "From *Haggar* to *Hitachi*, Customs at the Crossroads," 7th Annual Conference on Recent Trends in Customs Law, Customs Lawyers Association, Washington, District of Columbia. Position Paper supplied.

September 2000 and September 1998 [dates unknown]: Speaker, Conference on

Recent Developments in Military Law, United States Air Force Office of the Judge Advocate General, Arlington, Virginia. I addressed members of the United States Air Force Office of the Judge Advocate General on recent developments in Military Law in the United States Court of Federal Claims. I have no notes, transcript, or recording. The address for the United States Air Force Office of the Judge Advocate General is in North Arlington, Virginia [street address unknown]

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.

Charlie Savage, *Justice Dept. Lost Track of Terrorists, Report Says*, N.Y. Times, May 16, 2013. Copy supplied.

Throughout my career with the United States Department of Justice, both in the Civil and Criminal Divisions, I drafted a number of press releases issued by the Department's Office of Public Affairs in connection with the civil cases I litigated, the criminal cases I prosecuted, and the appellate cases I argued. I have provided all of those that I could locate, which also should be available at https://www.justice.gov, although it is possible that I may have missed some:

Press Release, *More Than $40 Million Worth of Gold, Silver and Jewelry Forfeited in International Money Laundering Case: Ten Tons of Assets Forfeited in Black Market Peso Exchange Investigation*, U.S. Dep't of Just., Apr. 12, 2010. Copy supplied.

Press Release, *Former Department of Labor Chief of Staff Pleads Guilty for Failing to Report Gifts from Former Lobbyist Jack Abramoff*, U.S. Dep't of Just. Federal Bureau of Investigation, Apr. 7, 2010. Copy supplied.

Press Release, *Former Congressional Chief of Staff Sentenced for Honest Services Fraud Conspiracy*, U.S. Dep't of Just., July 30, 2009. Copy supplied.

Press Release, *Fourth Person Pleads Guilty to Illegally Accessing Confidential Passport Files*, U.S. Dep't of Just., July 10, 2009. Copy supplied.

Press Release, *Former Social Worker Sentenced for Role in Scheme to Defraud Department of Veterans Affairs and Obstructing Justice*, U.S. Dep't of Just., June 29, 2009. Copy supplied.

Press Release, *Former State Department Employee Sentenced for Illegally Accessing Confidential Passport Files*, U.S. Dep't of Just., Mar. 23, 2009.

Copy supplied.

Press Release, *Third Individual Pleads Guilty to Illegally Accessing Confidential Passport Files*, U.S. Dep't of Just., Jan. 27, 2009. Copy supplied.

Press Release, *Two Virgin Islands Commissioners Sentenced in $1.4 Million Bribery and Kickback Scheme*, U.S. Dep't of Just., Aug. 14, 2008. Copy supplied.

Press Release, *Two Virgin Islands Commissioners Convicted in $1.4 Million Bribery and Kickback Scheme*, U.S. Dep't of Just., Feb. 28, 2008. Copy supplied.

Press Release, *Former Congressional Chief of Staff Pleads Guilty to Honest Services Fraud Conspiracy*, U.S. Dep't of Just., Dec. 7, 2007. Copy supplied.

Press Release, *Former Government Official Sentenced in $1.4 Million Virgin Islands Bribery Scandal*, U.S. Dep't of Just., May 3, 2007. Copy supplied.

Press Release, *Former Government Official Is Third to Plead Guilty in $1.4 Million Virgin Islands Bribery Scandal*, U.S. Dep't of Just., Sept. 26, 2006. Copy supplied.

Press Release, *Two Plead Guilty In $1.4 Million Virgin Islands Bribery Scandal*, U.S. Dep't of Just., July 12, 2006. Copy supplied.

Press Release, *Former Justice Department Attorney Pleads Guilty to Criminal Conflict of Interest Charge*, U.S. Dep't of Just., June 14, 2006. Copy supplied.

Press Release, *Chinese National Pleads Guilty to Fraudulently Obtaining US. Citizenship: Defendant Agrees To Cooperate In Ongoing Investigation Into $500 Million Bank Of China Embezzlement*, U.S. Dep't of Just., Apr. 26, 2005. Copy supplied.

Press Release, *Virgin Islands Senator Indicted on Fraud and Theft Charges*, U.S. Dep't of Just., Aug. 13, 2004. Copy supplied.

Press Release, *Former FBI Biologist Pleads Guilty to Filing False DNA Laboratory Reports*, U.S. Dep't of Just., May 18, 2004. Copy supplied.

Press Release, *Defendant Sentenced on Charges of Perjury, Obstruction of Investigation of Theft from San Juan Aids Institute*, U.S. Dep't of Just.,

Oct. 16, 2003. Copy supplied.

Alumni Profile, Seton Hall Law Magazine, Vol. 1 at 10–11 (Oct. 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: ___%
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.

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of

the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

16. **Legal Career**: Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1992 to 1994, I served as a law clerk to the Honorable Garrett E. Brown, Jr., of the United States District Court for the District of New Jersey.

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;

1994 – 2001
United States Department of Justice
Civil Division, Commercial Litigation Branch
1100 L Street, Northwest, 12th Floor
Washington, District of Columbia 20530
Trial Attorney

2001 – 2002
United States Department of Justice
Criminal Division, Asset Forfeiture and Money Laundering Section
Bond Building, 2nd Floor
1400 New York Avenue, Northwest
Washington, District of Columbia 20530
Trial Attorney

2002 – 2010
United States Department of Justice
Criminal Division, Public Integrity Section
Bond Building, 12th Floor
1400 New York Avenue, Northwest
Washington, District of Columbia 20530

Trial Attorney

2010 – 2017
United States Department of Justice
Office of the Deputy Attorney General
950 Pennsylvania Avenue, Northwest, 4th Floor
Washington, District of Columbia 20530
Associate Deputy Attorney General (2014 – 2017)
Senior Counsel to the Deputy Attorney General (2010 – 2014)

2017 – 2018
United States Department of Justice
United States Marshals Service
Office of General Counsel
1215 South Clark Street
Arlington, Virginia 22202
Associate General Counsel

2018 – present
Capital One Financial Corporation
1680 Capital One Drive
McLean, Virginia 22102
Vice President, Ethics and Investigations

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

My law practice has involved a mix of civil and criminal and trial and appellate court litigation in federal courts throughout the United States. I also have served as a senior advisor to several Deputy Attorneys General. I currently serve as the Accountable Executive for Capital One's ethics program and internal investigations.

Following my federal district court clerkship, I joined the United States Department of Justice through the Attorney General's Honors Program. During my 24-year tenure, I served as a civil litigator, a criminal prosecutor, an appellate advocate, and a manager and senior policy advisor.

From 1994 to 2001, I served as a Trial Attorney in the Civil Division's Commercial Litigation Branch, during which I litigated over 100 cases before the United States Court of Federal Claims, and I briefed and argued more than 50 appeals before the United States Court of Appeals for the Federal Circuit. The cases I handled involved civil lawsuits filed against the United States and various federal agencies involving government contracts, military pay, civilian personnel law, veterans' benefits, international trade, and constitutional, statutory, and regulatory challenges to federal agency actions. I also filed and litigated fraud counterclaims and special pleas in fraud.

From August 2001 to July 2010, I served as a Trial Attorney in the Criminal Division, first in the Asset Forfeiture and Money Laundering Section (August 2001 to July 2002) and then the Public Integrity Section (2002 to 2010). During my time in the Criminal Division, I directed more than 50 criminal investigations and led prosecutions involving money laundering, public corruption, and fraud, and briefed and argued appeals before the United States Courts of Appeals for the First, Second, Third, Fifth, and Eleventh Circuits. The criminal charges I prosecuted involved: bribery and kickbacks; honest services mail and wire fraud; theft of federal funds; conspiracy; conflicts of interest; obstruction of justice; perjury; making false statements; tax evasion; money laundering; structuring currency transactions; and unauthorized computer access. I also litigated criminal forfeiture issues and petitions for writs of habeas corpus. I appeared before federal courts across the country, worked with and supervised attorneys and law enforcement agents nationwide, and worked with foreign governments in joint investigations.

From 2010 to 2017, I served in the Office of the Deputy Attorney General as a Senior Counsel to the Deputy Attorney General and then an Associate Deputy Attorney General. During this time, my in-court experience was limited to handling post-conviction proceedings in two cases I prosecuted during my tenure in the Criminal Division. Instead, my primary responsibilities included: advising the Deputy Attorney General on a range of legal, legislative, and policy issues relating to criminal justice and law enforcement; providing leadership and oversight to, among other components, the United States Marshals Service, INTERPOL Washington, Drug Enforcement Administration, Bureau of Alcohol, Tobacco, Firearms and Explosives, United States Parole Commission, Criminal Division, Tax Division, Office of Justice Programs, United States Trustee Program, and Access to Justice Initiative; chairing and serving on a number of intra- and interagency task forces and working groups; and briefing Administration Officials and members of Congress and their staffs.

From 2017 to 2018, I served as an Associate General Counsel in the

United States Marshals Service. During this time, I advised the Marshals Service's Director and General Counsel on legal, ethical, contractual, legislative, and policy issues relating to law enforcement and agency operations. I also investigated agent misconduct and coordinated the agency's litigation positions.

Since 2018, I have served as Vice President, Ethics and Investigations, for Capital One Financial Corporation, a federally regulated financial services company. In this role, I serve as the Accountable Executive for the administration of the company's Code of Conduct, Ethics Office and enterprise ethics program, and internal investigations into allegations of fraud and business misconduct.

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

During my tenure as an attorney for the United States Department of Justice (1994 to 2018), my client was, broadly speaking, the United States. In my current role at Capital One Financial Corporation, my client is the financial services company.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

From 1994 through 2010, while serving as a Trial Attorney in the Civil Division and then the Criminal Division of the United States Department of Justice, my practice was exclusively in litigation and my court appearances were frequent. While serving in the Office of the Deputy Attorney General from 2010 to 2017, my practice focused on management, oversight, policy, and legislative matters, and my court appearances were infrequent. Between 2017 and 2018, while serving in the United States Marshals Service Office of General Counsel, my practice was evenly split between litigation and counseling; I did not appear in court. In my current position at Capital One Financial Corporation, my role is in Compliance rather than the Legal Department; I do not litigate or appear in court.

i. Indicate the percentage of your practice in:
   1. federal courts: 99%
   2. state courts of record: __%
   3. other courts: __%
   4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Between 1994 and 2001, while in the Civil Division of the United States Department of Justice, I tried eight cases to judgment, all as lead counsel for the United States. During that time, I also litigated a significant number of cases to final judgment as lead counsel for the United States, through filing and arguing of dispositive motions.

From 2001 through 2010, while in the Criminal Division of the United States Department of Justice, I tried five cases to verdict, four as lead counsel for the United States and one as second chair. During that time, I also negotiated dozens of guilty pleas as lead counsel for the United States.

i. What percentage of these trials were:
   1. jury: 40%
   2. non-jury: 60%

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 served as counsel of record or personally argued any case before the Supreme Court of the United States. I participated in drafting five briefs in opposition to petitions for writs of certiorari handled by the United States Department of Justice Office of the Solicitor General:

Griffin v. Secretary of Veterans Affairs, 537 U.S. 947 (2002) (brief in opposition, 2002 WL 32135715) (cert. denied)

Small v. United States and *Neptune v. United States*, 528 U.S. 821 (1999) (consolidated brief in opposition, 1999 WL 33641058) (cert. denied)

Porter v. United States, 528 U.S. 809 (1999) (brief in opposition, 1999 WL 33641211) (cert. denied)

Bestfoods v. United States, 528 U.S. 810 (1999) (brief in opposition, 1999 WL 33641299) (cert. denied)

Routen v. West, 525 U.S. 962 (1998) (brief in opposition) (cert. denied). Copy supplied.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally

handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Griles*, No. 7-079 (D.D.C.) (Judge Huvelle)

Between 2006 and 2010, I served as lead counsel for the United States in the criminal investigations and prosecutions of several individuals involved in illicit dealings with former lobbyist Jack A. Abramoff, including the former Deputy Secretary of the United States Department of the Interior, Mr. Griles. On March 23, 2007, Mr. Griles pleaded guilty in the United States District Court for the District of Columbia to obstructing a United States Senate investigation into the Abramoff lobbying scandal. The former Deputy Secretary was sentenced to ten months in prison, followed by three years of supervised release, ordered to perform 100 hours of community service, and fined $30,000.

In this matter, I led the criminal investigation, conducted extensive grand jury proceedings, engaged in plea negotiations, represented the United States during the plea hearing, prepared the United States' sentencing memoranda, and presented oral argument at the sentencing hearing.

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2. *GBQC Architects v. United States*, No. 98-399C (Fed. Cl.) (Judge Miller)

Between April 1998 and September 1999, I served as lead counsel for the United States and the Smithsonian Institution in a lawsuit filed in the United States Court of Federal Claims by the architecture firm hired to design the National Museum of the American Indian on the National Mall in Washington, District of Columbia. The architecture firm was challenging its termination for default and seeking reinstatement and $2 million in damages. In exchange for converting the termination for default into a termination for convenience, the architecture firm voluntarily dismissed its complaint and agreed to pay nearly $500,000 to the Smithsonian Institution in re-procurement costs. On September 28, 1999 – the day the lawsuit was dismissed – the formal groundbreaking ceremony for the National Museum of the American Indian was held on the National Mall.

In this matter, I briefed and argued a motion for partial dismissal, proposed a government counterclaim, conducted discovery, and represented the government in mediation conducted by the presiding judge.

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3. *United States v. Plaskett*, Crim. No. 2007-60, 2008 WL 3833838 (D.V.I. Aug. 13, 2008) (Chief Judge Gomez), *aff'd*, 355 F. App'x 639, 2009 WL 4643819 (3d Cir. Dec. 2, 2009) (Circuit Judges McKee, Fuentes, and Nygaard), *cert. denied*, 130 S. Ct. 3398 and 131 S. Ct. 614 (2010).

Between 2007 and 2012, I served as lead counsel for the United States and the government of the United States Virgin Islands in the criminal investigations and prosecutions of a number of high-ranking Virgin Islands government officials and businessmen. The defendants were involved in a $1.4 million government contract

bribery and kickback scheme and a subsequent scheme to obstruct a joint federal/local task force investigation and a federal grand jury investigation. Prior to trial, four defendants pleaded guilty. In February 2008, following a three-week jury trial in the United States District Court of the Virgin Islands, two members of the governor's cabinet were convicted on bribery and obstruction of justice charges. The defendants were sentenced to prison terms of nine years and seven years and ordered to pay more than $1 million in restitution. The United States Court of Appeals for the Third Circuit affirmed the convictions and sentences. The Supreme Court of the United States denied the petitions for writs of certiorari.

In each of these matters, I directed the criminal investigations, conducted grand jury proceedings, engaged in plea negotiations, represented the United States during the plea hearings, drafted and argued pre- and post-trial motions, first-chaired the trial, prepared the United States' sentencing memoranda, presented oral argument at the sentencing hearings, drafted the United States' consolidated appellate brief to the Third Circuit (decided without oral argument), drafted the United States' responses to the petitions for habeas corpus relief, and first-chaired the habeas corpus hearing.

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4. *Small v. United States*, 36 Fed. Cl. 43 (1996) (Judge Wiese), *as amended*, 37 Fed. Cl. 149 (1997) (same), *aff'd*, 158 F.3d 576 (Fed. Cir. 1998) (Judges Plager, Clevenger, and Gajarsa), *as amended*, 180 F.3d 1343 (Fed. Cir.) (same), *cert. denied*, 528 U.S. 821 (1999); *Roane v. United States*, 36 Fed. Cl. 168 (1996) (Judge Hodges), *rev'd*, 231 F.3d 1348 (Fed. Cir. 2000) (Judges Plager and Gajarsa and Senior Judge Archer), *as amended*, 237 F.3d 1352 (Fed. Cir. 2001) (same); *Neptune v. United States*, 38

Fed. Cl. 510 (1997) (Judge Tidwell), *aff'd*, 178 F.3d 1306 (Fed. Cir. 1998) (table) (Judges Plager, Clevenger, and Gajarsa), *cert. denied*, 528 U.S. 821 (1999); *Fluellen v. United States*, 44 Fed. Cl. 97 (1999) (Judge Hewitt), *aff'd*, 225 F.3d 128 (Fed. Cir. 2000) (Judges Newman and Lourie and Senior Judge Archer); *Curtis v. Peters*, 107 F. Supp. 2d 1 (D.D.C. 2000) (Judge Friedman).

Between 1995 and 2001, I served as lead counsel for the United States and the United States Air Force in a series of cases filed in the United States Court of Federal Claims and the United States District Court for the District of Columbia challenging, among other things, the Air Force's statutory and regulatory authority to use review panels in conducting officer promotion boards. Following contrary opinions simultaneously issued by the Court of Federal Claims, the United States Court of Appeals for the Federal Circuit affirmed the Air Force's long-standing practice. The Supreme Court of the United States denied the petitions for writs of certiorari.

In each of these matters, I briefed and argued cross-motions for summary judgment in the Court of Federal Claims and District of Columbia District Court and briefed and argued the above-cited appeals in the Federal Circuit. I also drafted the United States' brief in opposition to the petitions for writs of certiorari for the Office of the Solicitor General in the *Small* and *Neptune* cases.

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5. *Bestfoods v. United States*, 165 F.3d 1371 (Fed. Cir.) (Circuit Judges Newman, Schall, and Bryson), *cert. denied*, 528 U.S. 810 (1999); *Bestfoods v. United States*, 260 F.3d 1320 (Fed. Cir. 2001) (Circuit Judges Newman and Bryson and Senior Circuit Judge Archer).

Between 1998 and 2001, I served as lead counsel for the United States and the United States Department of the Treasury in two affirmative appeals from the United States Court of International Trade. Both appeals involved the authority vested in the Secretary of the Treasury to implement and administer the 1994 North American Free Trade Agreement (NAFTA) as it pertained to the country of origin marking requirements of the Tariff Act of 1930. In the first appeal, the United States Court of Appeals for the Federal Circuit held that the Secretary acted lawfully in promulgating regulations applying a rule-

oriented tariff-shift method (rather than the traditional case-by-case adjudicatory approach) to determine whether goods imported from NAFTA countries are "substantially transformed" in the United States and, thus, exempted from the country of origin marking requirements of the Tariff Act of 1930. The Supreme Court of the United States denied the petition for a writ of certiorari. In the second appeal, following remand, the Federal Circuit held that the Secretary acted lawfully in withholding a de minimis exception under the federal marking statute for most agricultural products.

In this matter, I drafted the government's appellate briefs, argued both appeals before the Federal Circuit, and prepared the draft brief in opposition to the petition for a writ of certiorari.

Opposing Counsel
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6. *AU Duong Quy (a/k/a "Lost Army Commandos") v. United States*, No. 95-309C (Fed. Cl.) (Judge Margolis); *Mattes v. Witschonke*, Civ. No. 98-1907-SH (S.D. Fla. Nov. 4, 1998) (Judge Highsmith), *rev'd Mattes v. Chairman, Vietnamese Commandos Compensation Comm'n*, 173 F.3d 817 (11th Cir. 1999) (per curiam) (Circuit Judge Marcus, Senior Circuit Judge Hill, and District Judge Adams).

Between 1997 and 2000, I served as lead counsel for the United States and the United States Department of Defense in a breach of contract action filed by nearly 300 individuals identified as the "Lost Army Commandos" in the United States Court of Federal Claims. The complaint alleged the Central Intelligence Agency (CIA) agreed to pay each plaintiff (*i.e.*, South Vietnamese nationals) $2,000 per year to conduct covert intelligence missions inside North Vietnam in the 1950s and 1960s. The plaintiffs were purportedly captured and interned for up to 25 years and, under the terms of the alleged covert contract, sought $50,000 each in damages. While this action was pending, Congress passed the Commandos Compensation Act of 1996, Pub. L. No. 104-201 § 657, 110 Stat. 2422,2584 (1996), which, among other things: established the Vietnamese Commandos Compensation Commission (VCCC) within the Department of Defense to adjudicate and remit payment to legitimate claims submitted within a specified period of time; statutorily capped attorney fees at 10 percent; and precluded judicial review of any decision rendered by the VCCC. In February 2000, upon the government's motion, and demonstration that the VCCC had been established and was timely processing claims, the Court of Federal Claims dismissed the action with prejudice.

In the interim, in March 1998, the Department of Defense was notified by the Federal Bureau of Investigation that an attorney representing the majority of the Vietnamese claimants was retaining attorney fees in excess of the statutory cap imposed by Congress. When efforts to resolve the issue failed, the United States notified the attorney that the

VCCC would begin remitting payments directly to his clients. The attorney filed suit in the United States District Court for the Southern District of Florida seeking declaratory judgment as to the appropriateness of his attorney fees and a writ of mandamus to prevent the VCCC from disbursing funds directly to his clients. Following an expedited bench trial conducted in October 1998, the district court granted the attorney's requests for relief, concluding that the Act did not preclude such preexisting fee arrangements. On the government's appeal, the United States Court of Appeals for the Eleventh Circuit held that the district court erred in exercising jurisdiction over the matter in contrast to Congress' express "No Right to Judicial Review" provision in the Commandos Compensation Act. The Eleventh Circuit remanded the case with instructions to vacate all orders entered.

As lead counsel for the United States in the litigation filed in both the Court of Federal Claims and the Southern District of Florida, I drafted the government's pleadings, motions, and pre-and post-trial briefs; presented oral argument before both trial courts; counseled the VCCC; first-chaired the district court trial; and assisted in drafting the government's appellate brief filed in the Eleventh Circuit.

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7. *Griffin v. Secretary of Veterans Affairs*, 288 F.3d 1309 (Fed. Cir. 2002) (Circuit Judges Clevenger and Dyk and Senior Circuit Judge Archer), *cert. denied*, 537 U.S. 947 (2002).

Between 2001 and 2002, I served as lead counsel for the United States and the Department of Veterans Affairs (VA) in a First Amendment facial challenge to a VA regulation governing the display of flags in 119 national veterans' cemeteries. In an original jurisdiction lawsuit filed in the United States Court of Appeals for the Federal Circuit, the Sons of Confederate Veterans organization challenged the VA's denial of

their request to amend or waive the regulation to permit the daily display of a large Confederate flag at a national cemetery where the remains of Confederate soldiers were buried. Under the VA regulation, the Confederate flag can be flown in national veterans' cemeteries on Memorial Day and Confederate Memorial Day (in states where that holiday is observed) and to mark individual gravesites. The VA regulation states that only the American flag and the National League of Families POW/MIA flag may be on permanent display. The Federal Circuit held that the VA regulation does not violate the First Amendment on its face, notwithstanding the discretion vested in government officials to grant or deny exceptions to the regulation. The Supreme Court of the United States denied the petition for a writ of certiorari.

In this matter, I drafted the government's appellate brief and argued the case before the Federal Circuit.

Opposing counsel
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8. *United States v. Janowsky*, 133 F.3d 888 (Fed. Cir. 1998) (Chief Judge Mayer, Senior Circuit Judge Archer, and Circuit Judge Lourie); *United States v. Janowsky*, No. 90-3846C (Fed. Cl. Aug. 25, 1998) (Judge Turner).

Between 1997 and 1998, I served as lead counsel for the United States and the Federal Bureau of Investigation (FBI) in a decade-old, multi-million-dollar breach of contract and Fifth Amendment Takings Clause lawsuit filed in the United States Court of Federal Claims by a former cooperative witness and his wife. In exchange for their cooperation and the use of their business in a public corruption and organized crime investigation, the plaintiffs alleged that the FBI agreed to purchase or at least guarantee the sale of their business. The plaintiffs argued in the alternative that the FBI effectively took their business without just compensation. The Court of Federal Claims twice dismissed the complaint on the government's filing of successive dispositive motions. Following the second reversal, the case was remanded for trial. At the conclusion of the bench trial, the Court of Federal Claims granted the United States' motion for a directed verdict and awarded costs to the government. A third appeal was not filed.

In this matter, I argued the second appeal before the Federal Circuit and first-chaired the trial before the Court of Federal Claims on remand.

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9. *Vereda, Ltda. v. United States*, 41 Fed. Cl. 495 (1998), *vacated in part*, 46 Fed. Cl. 12 (1999), *amended*, 46 Fed. Cl. 569 (2000) (Judge Smith), *pet'n for interlocutory appeal granted*, 250 F.3d 2000 (Fed. Cir. 2000) (table) (Circuit Judges Rader, Gajarsa, and Linn), *rev'd*, 271 F.3d 1367 (Fed. Cir. 2001) (Circuit Judges Clevenger, Schall, and Dyk)

Between 1998 and 2001, I served as lead counsel for the United States and the Drug Enforcement Administration (DEA) in a case filed in the United States Court of Federal Claims involving the criminal seizure and administrative forfeiture of an airplane used in narcotics trafficking. Seeking to collaterally challenge the actions taken by the DEA and to recover money damages, the mortgagee of the aircraft, who claimed an innocent ownership interest, asserted that the forfeiture amounted to an illegal exaction, a taking of property without just compensation in violation of the Fifth Amendment, and an excessive fine in violation of the Eighth Amendment. The Court of Federal Claims twice granted-in-part and denied-in-part the government's motions to dismiss, holding that the court had jurisdiction to consider the merits of the Takings Clause claim. After granting the government's petition for an interlocutory appeal, the United States Court of Appeals for the Federal Circuit reversed the trial court's jurisdictional ruling and remanded the case with instructions to enter judgment in favor of the United States.

In this matter, I drafted and filed with the Court of Federal Claims the government's motion for reconsideration, as well as the motion to certify the jurisdictional issue for interlocutory appeal and to stay further proceedings. I also drafted and filed with the Federal Circuit the government's petition for interlocutory appeal and, once granted, the government's merits briefs. I argued the appeal before the Federal Circuit.

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10. *United States v. Speed Joyeros, SA.*, No. 00-CR-960-JBW (E.D.N.Y.) (Judge Weinstein); *United States v. Hebroni*, No. 02-1106, 37 F. App'x 549 (2d Cir. Mar. 13, 2002) (Circuit Judges Leval, Calabresi, and Cabranes); *United States v. Speed Joyeros, S.A.*, 204 F. Supp. 2d 412 (E.D.N.Y. 2002) (Judge Weinstein)

Between 2001 and 2002, I served on the prosecution team that led to the first United States indictment and convictions of offshore businesses engaged in the illicit black-market peso exchange – a money laundering operation through which narcotics proceeds generated in the United States were exchanged for Colombian pesos and then used to purchase goods in the Colon Free Zone of Panama. The defendants owned and operated two wholesale jewelry businesses in Panama used by Colombian narcotics traffickers to launder United States currency. On March 20, 2002, on the eve of trial, the owner of the two businesses, Ms. Hebroni, and her two companies pleaded guilty to conspiracy to commit money laundering in the United States District Court for the Eastern District of New York. Ms. Hebroni was sentenced to 27 months in prison, followed by three years supervised release, the forfeiture of her businesses, and fined $200,000. In total, over $40 million in jewelry was seized by and forfeited to the United States from the Panamanian businesses.

In this matter, I assisted in the investigation and trial preparation, drafted pretrial motions, participated in the plea negotiations, assisted in the drafting of the government's sentencing memoranda, and participated in the sentencing hearing.

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18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not

involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

During my tenure in the United States Department of Justice Office of the Deputy Attorney General, I advised several Deputy Attorneys General on a number of issues, made policy judgments and recommendations, oversaw certain Department components, served on a number of Department and interagency task forces and working groups, reviewed proposed legislation, and provided briefings to members of Congress and Administration officials and their staff. For example, between 2012 and 2013, I served as a United States representative on the INTERPOL Evolving Fund Working Group which explored whether the international law enforcement organization could (and should) accept private funding to better perform its core mission of information sharing. During this time, I was also responsible for establishing and staffing the National Commission on Forensic Science to improve the confidence and reliability of forensic science in the criminal justice system. In late 2016 and early 2017, I represented the Justice Department in discussions with Administration Officials of President Obama and President Trump, respectively, regarding the federal government's response in connection with the Dakota Access Pipeline protests. In early 2017, in that same role, I represented the Justice Department in discussions with White House and Administration officials concerning immigration, the White House Opioid Task Force, and the Department of Veterans Affairs Telehealth Services program.

I have never 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.

    1996 – 1998: While employed by the United States Department of Justice, I served as an Adjunct Professor of Law at The George Washington University Law School. I taught legal research and writing and appellate advocacy to first-year law students. I am unable to locate a copy of the syllabus.

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 currently hold Capital One Stock (vested and unvested) and participate in Capital One's Deferred Compensation Program. If confirmed, I will divest these interests in accordance

with applicable laws and my employment contract.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    I have no plans, commitments, or agreements to pursue outside employment during service with the court if I am confirmed.

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

    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 wife serves as the Deputy Chief Administrative Patent Judge, Patent Trial and Appeal Board, at the United States Patent and Trademark Office (USPTO). Although unlikely, it is possible that a patent at issue in a dispute filed in the United States Court of Federal Claims under 28 U.S.C. § 1498 could be subject to collateral proceedings at the USPTO. If I am confirmed, and if that situation ever presents itself, either I or my wife (or both) immediately would self-recuse from the matter(s) to avoid any potential conflict of interest or the appearance of impropriety. I am unaware of any other individuals, family or otherwise, that are likely to present potential conflicts of interest.

       If confirmed, I would recuse myself from all matters in which Capital One Financial Corporation is involved directly or indirectly for at least as long as I maintain a financial interest in the company as well as with regard to any matters in which I was involved during my employment. I similarly would recuse myself from all cases in which I was either directly or indirectly involved during my entire tenure at the United States Department of Justice. For matters in which I was not involved, or handled by the Department of Justice after my departure, I

would apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine whether to recuse myself from other matters.

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 consult applicable rules, canons, and decisions addressing conflicts of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and any other materials addressing conflicts of interest and appearances of conflicts of interest. Based on that consultation, I would compile a comprehensive list of matters for easy flagging of potential conflicts of interest. In close cases, I would consult other judges and any persons designated by the court or judicial organizations to provide advice on such questions as they arise.

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.

During my tenure with the United States Department of Justice, my pro bono activities were restricted; still, I was afforded a number of opportunities to serve the disadvantaged. In 2011, for example, while serving in the Office of the Deputy Attorney General, I was responsible for overseeing the final development and public roll-out of law enforcement tools designed to raise awareness, help train, and foster a coordinated response between law enforcement, first responders, medical professionals, teachers, and members of the community who come in contact with the estimated nine million children in the United States who live in households where a parent or other adult abuses, manufactures, or distributes illicit drugs.

I currently serve on the Board of Directors of So Others Might Eat (SOME), a non-profit organization whose mission is to help Washington, DC's vulnerable population break the cycle of homelessness through comprehensive and transformative services. During the past five years, in addition to SOME, I volunteered with my family to assist the following community and local charitable organizations: A Wider Circle (Silver Spring, Maryland); Capital Area Food Bank (Washington, District of Columbia); Catholic Relief Services (Washington, District of Columbia); Greg Gannon Canned Food Drive (Washington, District of Columbia); and Martha's Table (Washington, District of Columbia).

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 5, 2013, I submitted a letter to the White House Counsel's Office expressing my interest in serving as a Judge on the United States Court of Federal Claims. In late August 2013, an official from the White House Counsel's Office contacted me to discuss my interest. Beginning on September 4, 2013, and continuing through late 2016, I was in contact with officials from the Office of Legal Policy at the Department of Justice.

On May 21, 2014, President Obama nominated me to serve as a Judge on the United States Court of Federal Claims. On September 18, 2014, following my July 24, 2014 Confirmation Hearing, the United States Senate Committee on the Judiciary reported my nomination. On December 17, 2014, my nomination was returned to the President. I was re-nominated on January 7, 2015, and the Senate Judiciary Committee again reported my nomination on February 26, 2015. My nomination expired on January 3, 2017.

On May 21, 2021, an official from the White House Counsel's Office contacted me to discuss my interest in a re-nomination to serve as a Judge on the United States Court of Federal Claims. On May 22, 2021, I interviewed with attorneys from the White House Counsel's Office. Since May 23, 2021, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On July 13, 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).

   Carolyn Nancy Lerner

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

   Judge, United States Court of Federal Claims

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.

   Appellate and District Court Mediation Programs
   United States Circuit Court for the District of Columbia Circuit
   Room 5732
   333 Constitution Avenue, Northwest
   Washington, District of Columbia 20001

   Residence:
   Chevy Chase, Maryland

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

   1965; Detroit, Michigan

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.

   1986 – 1989, New York University School of Law; J.D., 1989

   1984 – 1985, London School of Economics; no degree

   1983 – 1986, University of Michigan; B.G.S. (with High Distinction from the Honors College), 1986

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation

from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2018 – present
Georgetown University Law Center
600 New Jersey Avenue, Northwest
Washington, District of Columbia 20001
Adjunct Law Professor

2017 – present
Appellate and District Court Mediation Programs
United States Circuit Court for the District of Columbia Circuit
Room 5732
333 Constitution Avenue, Northwest
Washington, District of Columbia 20001
Chief Circuit Mediator

2011 – 2017
United States Office of Special Counsel
1730 M Street, Northwest, Suite 300
Washington, District of Columbia 20036
United States Special Counsel

2007 – 2010
George Washington University Law School
2000 H Street, Northwest
Washington, District of Columbia 20052
Adjunct Law Professor

1997 – 2011
Heller, Huron, Chertkof, Lerner, Simon & Salzman
1730 M Street, Northwest, Suite 412
Washington, District of Columbia 20036
Partner

1991 – 1997
Kator, Scott, Heller and Huron (dissolved 1997)
1275 K Street, Northwest
Washington, District of Columbia 20008
Associate

1989 – 1991
United States District Court for the Eastern District of Michigan
231 West Lafayette Boulevard
Detroit, Michigan 48226
Law Clerk to the Honorable Julian A. Cook, Jr.

Summer 1988
Sutherland, Asbill & Brennan LLP (now Eversheds Sutherland (US) LLP)
700 6th Street, Northwest
Washington, District of Columbia 20001
Summer Associate

1987 – 1988
American Civil Liberties Union
125 Broad Street
New York, New York 10004
Staff Associate

Summer 1987
NAACP Legal Defense and Educational Fund, Inc.
700 14th Street, Northwest, Suite 600
Washington, District of Columbia 20005
Summer Associate

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the 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.

   Congressional Record Tribute, United States Senate (2017)

   Congressional Record Tribute, United States House of Representatives (2017)

   Servant of Justice Award for service as United States Special Counsel (2014)

   Best Lawyers in America for Litigation, Labor and Employment Law, Civil Rights Law, and Employment for Individuals (2007, 2008, 2009, and 2010)

   Award for Dedication in Teaching, George Washington University Law School (2011)

   Root-Tilden public interest scholar at NYU School of Law (1986 – 1989)

   American Jurisprudence Award for academic performance in Labor Law (1988)

   Graduated with High Distinction from the Honors College at the University of Michigan (1986)

James B. Angel Scholar at the University of Michigan for academic achievement (1984, 1985)

Harry S. Truman Public Interest Scholarship (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.

American Constitution Society (2017 – 2019)

Council for Court Excellence (2005 – 2011)
Board Member (2005 – 2011)

District of Columbia Bar Association (1992 – 2011)
Pro Bono Committee (2006 – 2011)

District of Columbia Women's Bar Association (1992 – 2011, 2020 – present)

National and Metropolitan Washington Employment Lawyers Association (1997-2011)

Washington Council of Lawyers (1995 – 2011, 2018 – present)
President (2001 – 2002)
Vice President (2000 – 2001)
Board Member (1995 – 2011, 2018 – 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.

District of Columbia, 1990
Pennsylvania, 1989

There have been no lapses in membership. I resigned from the Pennsylvania bar in 2017 because I had not practiced in that jurisdiction since my admission and did not intend to in the future.

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, 2007
United States Court of Appeals for the District of Columbia Circuit, 2010

United States District Court for the District of Columbia, 1993
Court of Appeals for the District of Columbia, 1991

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.

Center for WorkLife Law, board chair (2006 – 2011)

Chevy Chase Elementary School Parent Teacher Association (2002 – 2009)

March on Washington Film Festival, board member (2019 – present)

Rollingwood Neighborhood Citizens Association (2015 – present)

Rosemary Hills Elementary School Parent Teacher Association (2000 – 2005)

Wage Project, advisory board member (2007 – 2011)

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.

Blog post, 2020 Presidents' Award for Public Service: Paul Smith, Washington Council of Lawyers, Nov. 13, 2020. Copy supplied.

With Jason Zuckerman, "The U.S. Office of Special Counsel's Role in Protecting Whistleblowers and Serving as a Safe Channel for Government Employees to Disclose Wrongdoing," National Employment Lawyer's Association Fall Seminar (Fall 2013). Copy supplied.

A Law Misused for Political Ends, N.Y. Times (Oct. 30, 2011). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

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

H. Comm. on Oversight and Government Reform Hearing on Transparency at TSA, 115th Congress (2017) (testimony given as Special Counsel). Copy supplied.

Letter from Special Counsel Carolyn Lerner to Senator Richard Blumenthal, Dec. 12, 2016. Copy supplied.

S. Comm. on Homeland Security & Governmental Affairs Hearing on the Nominations of Michael J. Missal and Carolyn N. Lerner, 114th Congress (2016) (testimony given as nominee for Special Counsel). Copy supplied.

Fiscal Year 2016 Congressional Budget Justification and Performance Budget Goals, United States Office of Special Counsel (2015). Copy supplied.

H. Comm. on Oversight and Government Reform Hearing on the Merit Systems Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization Before the Subcomm. on Government Operations, 114th Congress (2015) (testimony given as Special Counsel). Copy supplied.

S. Comm. on Veterans' Affairs Hearing on Pending Health and Benefits Legislation, 114th Congress (2015) (testimony given as Special Counsel). Copy

supplied.

S. Comm. on Homeland Security and Governmental Affairs Hearing on Improving VA Accountability: Examining First-Hand Accounts of Department of Veterans Affairs Whistleblowers, 114th Congress (2015) (testimony given as Special Counsel). Copy supplied.

S. Comm. on Appropriations Hearing on A Review of Whistleblower Claims at the Department of Veterans Affairs Before the Subcomm. on Military Construction, Veteran Affairs and Related Agencies, 114th Congress (2015) (testimony given as Special Counsel). Copy supplied.

S. Comm. on Veterans' Affairs Hearing on Pending Health and Benefits Legislation, 114th Congress (2015) (testimony given as Special Counsel). Copy supplied.

S. Comm. on the Judiciary Hearing on Juvenile Justice Grants Oversight, 114th Congress (2015) (statement given as Special Counsel). Copy supplied.

H. Comm. on Veterans' Affairs Hearing on Addressing Continued Whistleblower Retaliation within the VA Before the Subcomm. on Oversight and Investigations, 114th Congress (2015) (testimony given as Special Counsel). Copy supplied.

Annual Report to Congress for Fiscal Year 2014, United States Office of Special Counsel (2015). Copy supplied.

FY 2014 Performance and Accountability Report, United States Office of Special Counsel (2015). Copy supplied.

Fiscal Year 2015 Congressional Budget Justification and Performance Budget Goals, United States Office of Special Counsel (2014). Copy supplied.

H. Comm. on Oversight and Government Reform Hearing on Examining the Administration's Treatment of Whistleblowers Before the Subcomm. on Federal Workforce, U.S. Postal Service and the Census, 113th Congress (2014) (testimony given as Special Counsel). Copy supplied.

H. Comm. on Oversight and Government Reform Hearing on White House Office of Political Affairs: Is Supporting Candidates and Campaign Fundraising an Appropriate Use of a Government Office?, 113th Congress (2014) (testimony given as Special Counsel). Copy supplied.

H. Comm. on Veterans' Affairs Hearing on VA Whistleblowers: Exposing Inadequate Service Provided to Veterans and Ensuring Appropriate Accountability, 113th Congress (2014) (testimony given as Special Counsel). Copy supplied.

H. Comm. on Oversight and Government Reform Hearing on Whistleblower Reprisal and Management Failures at the Chemical Safety Board, 113th Congress (2014) (testimony given as Special Counsel). Copy supplied.

S. Comm. on Homeland Security & Governmental Affairs Hearing on Examining the Use and Abuse of Administratively Uncontrollable Overtime at the Department of Homeland Security Before Subcomm. on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, 113th Congress (2014) (testimony given as Special Counsel). Copy supplied.

Annual Report to Congress for Fiscal Year 2013, United States Office of Special Counsel (2014). Copy supplied.

FY 2013 Performance and Accountability Report, United States Office of Special Counsel (2014). Copy supplied.

Fiscal Year 2014 Congressional Budget Justification and Performance Budget Goals, United States Office of Special Counsel (2013). Copy supplied.

S. Comm. on Homeland Security & Governmental Affairs Hearing on Examining the Use and Abuse of Administratively Uncontrollable Overtime at the Department of Homeland Security Before Subcomm. on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, 113th Congress (2013) (testimony given as Special Counsel). Copy supplied.

H. Comm. on Oversight and Government Reform Hearing on Abuse of Overtime at DHS: Padding Paychecks and Pensions at Taxpayer Expense Before Subcomm. on National Security, 113th Congress (2013) (testimony given as Special Counsel). Copy supplied.

S. Comm. on Homeland Security & Governmental Affairs Hearing on Strengthening Government Oversight: Examining the Roles and Effectiveness of Oversight Positions within the Federal Workforce Before Subcomm. on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, 113th Congress (2013) (testimony given as Special Counsel). Copy supplied.

S. Comm. on Veterans' Affairs Hearing on Pending Benefits Legislation, 113th Congress (2013) (testimony given as Special Counsel). Copy supplied.

Annual Report to Congress for Fiscal Year 2012, United States Office of Special Counsel (2013). Copy supplied.

FY 2012 Performance and Accountability Report, United States Office of Special Counsel (2013). Copy supplied.

Fiscal Year 2013 Congressional Budget Justification and Performance Budget Goals, United States Office of Special Counsel (2012). Copy supplied.

H. Comm. on Oversight and Government Reform Hearing on Hatch Act: Options for Reform Before Subcomm. on the Federal Workforce, U.S. Postal Service, and Labor Policy, 112th Congress (2012) (testimony given as Special Counsel). Copy supplied.

S. Comm. on Homeland Security & Governmental Affairs Hearing on A Review of the Office of Special Counsel and Merit Systems Protection Board Before Subcomm. on Oversight of Government Management, the Federal Workforce, and the District of Columbia, 112th Congress (2012) (testimony given as Special Counsel). Copy supplied.

Annual Report to Congress for Fiscal Year 2011, United States Office of Special Counsel (2012). Copy supplied.

FY 2011 Performance and Accountability Report, United States Office of Special Counsel (2012). Copy supplied.

Fiscal Year 2012 Congressional Budget Justification and Performance Budget Goals, United States Office of Special Counsel (2011). Copy supplied.

H. Comm. on Armed Services Hearing on Dover Port Mortuary (closed session), 112th Congress (2011) (testimony given as Special Counsel). Copy supplied.

Annual Report to Congress for Fiscal Year 2010, United States Office of Special Counsel (2011). Copy supplied.

FY 2010 Performance and Accountability Report, United States Office of Special Counsel (2011). Copy supplied.

FY 2010 Summary of Performance and Financial Information, United States Office of Special Counsel (2011). Copy supplied.

S. Comm. on Homeland Security & Governmental Affairs Hearing on the Nomination of Carolyn N. Lerner to be Special Counsel, Office of Special Counsel, 112th Congress (2011) (testimony given as nominee for Special Counsel). Copy supplied.

Additionally, as Special Counsel it was my role to routinely send cover letters accompanying OSC reports to the White House and Congress. Those letters can be found at https://osc.gov/PublicFiles.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions,

conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

March 28, 2017: Speaker, American Constitution Society, Washington, District of Columbia Chapter, Washington, District of Columbia. Notes Supplied

September 15, 2016: Speaker, Federal Sector Labor Law Conference, Chicago, Illinois. PowerPoint supplied.

August 1, 2016: Speaker, Senate Whistleblower Caucus, Washington, District of Columbia. Remarks supplied.

July 22, 2016: Speaker, House Whistleblower Caucus, Washington, District of Columbia. Remarks supplied.

December 3, 2014: Public Servant of the Year Award Ceremony, United States Office of Special Counsel, Washington, District of Columbia. Remarks supplied.

January 14, 2014: Speaker, Equal Employment Opportunity Commission, Washington, District of Columbia. Remarks supplied.

December 5, 2013: Speaker, Federal Advisory Council on Occupational Safety and Health, Washington, District of Columbia. Remarks supplied.

October 18, 2013: Speaker, National Employment Lawyers Association, Washington, District of Columbia. Remarks supplied.

January 15, 2013: Speaker, Chief Human Capital Officers Council, Washington, District of Columbia. Remarks supplied.

June 27, 2012: Speaker, Public Servant of the Year Award Presentation, United States Office of Special Counsel, Washington, District of Columbia. Remarks supplied.

May 21, 2012: Speaker, Office of Inspector General, Department of Defense, Washington, District of Columbia. Remarks supplied.

February 21, 2012: Speaker, Council of Inspectors General on Integrity and Efficiency, Washington, District of Columbia. Remarks supplied.

December 7, 2011: Speaker, Wednesday Morning Breakfast, hosted by Grover

Norquist, Washington, District of Columbia. Remarks supplied.

October 1, 2011: Panelist, Reflections from Obama Administration Appointments, Whistleblower Assembly, Washington, District of Columbia. Video available at https://www.youtube.com/watch?v=zyDsLTh1nlA.

September 19, 2011: Speaker, National Whistleblower Assembly, Washington, District of Columbia. Remarks supplied.

July 29, 2011: Panelist, Protection of Federal Whistleblowers, Sunlight Foundation, Washington, District of Columbia. Video available at https://www.c-span.org/video/?300795-1/protection-federal-whistleblowers.

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 various electronic databases in an effort to identify all interviews responsive to this question. I have located the articles below, but it is possible that there are some I have no record of and thus was not able to identify.

Carrie Johnson, *Merrick Garland Heads For Confirmation Hearing, 5 Years After He Was Denied A Vote*, National Public Radio, Feb. 21, 2021. Copy supplied.

Bruce Leshan, *Judge Merrick Garland has been tutoring 2nd graders at Northeast DC elementary school for 21 years*, WUSA9, Feb. 21, 2021. Copy supplied.

Isaac Stanley-Becker, *Meet Christine Blasey Ford's lawyer Debra Katz: 'Nerves of steel' and proud to be among the 'Top 10 Plaintiff's Attorneys to Fear Most'*, Wash. Post, Sept. 24, 2018. Copy supplied.

Anna Kramer, *JFK Jr.'s '83 application stolen, Brown says*, The Brown Daily Herald, Oct. 13, 2017. Copy supplied.

Joe Davidson, *Special Counsel Lerner leaves office as Trump rejects highly praised whistleblower advocate*, Wash. Post, June 7, 2017. Copy supplied.

The office of Sen. Johnny Isakson, R-Ga., news release, *Sen. Isakson Highlights Broad Support for Accountability Bill from Key Stakeholders*, May 15, 2017. Copy supplied.

Joe Davidson, *Trump's conflicts of interest could conflict federal employees*, Wash. Post, Dec. 22, 2016. Copy supplied.

Amanda Dolasinski, *Womack Whistleblower's courage to expose problem to be honored*, Fayetteville Observer, Sept. 29, 2016. Copy supplied.

George Jackson, *Whistleblower protections in the federal workplace*, Government Matters, Aug. 2, 2016. Video available at https://govmatters.tv/whistleblower-protections-in-the-federal-workplace.

Joe Davidson, *Hatch Act — too complicated for a Cabinet secretary? Not really*, Wash. Post, July 20, 2016. Copy supplied.

Christina Crippes, *Blum-sponsored whistleblower bill passes House*, Waterloo-Cedar Falls Courier, June 28, 2016. Copy supplied.

Lisa Rein, *In rare action, U.S. agency docks pay for three bosses who fired whistleblower*, Wash. Post, June 9, 2016. Copy supplied.

Tom Temin, *Carolyn Lerner: Slew of VA whistleblower cases raises OSC's profile*, Federal News Radio, Oct. 13, 2015. Audio available at https://federalnewsnetwork.com/tom-temin-federal-drive/2015/10/carolyn-lerner-slew-of-va-whistleblower-cases-raises-oscs-profile.

Joe Davidson, *VA culture of reprisals against whistleblowers remains strong after scandal*, Wash. Post, Sept. 22, 2015. Copy supplied.

Quil Lawrence, *U.S. Office Of Special Counsel Calls Out VA Firing Of Whistleblowers*, National Public Radio, Sept. 17, 2015. Copy supplied.

Todd Spangler, *Detroit air traffic controllers expose risk, get credit*, Detroit Free Press, Sept. 15, 2015. Copy supplied.

Lisa Rein, *VA whistleblowers, punished for revealing excessive opiate use and infestation, are finally exonerated*, Wash. Post, July 25, 2015. Copy supplied.

Charles S. Clark, *VA Psychiatrist Wins Settlement After Complaints About Openness as Lesbian*, Gov't Exec., May 12, 2015. Copy supplied.

Charles S. Clark, *Whistleblowers Who Exposed Hiring Offenses at Bonneville Power Administration Win Relief*, Gov't Exec., Apr. 2, 2015. Copy supplied.

James T. Mulder, *Syracuse VA makes amends to whistleblower who suffered retaliation*, syracuse.com, Jan. 21, 2015. Copy supplied.

Bart Jansen, *Supreme Court sides with former TSA air marshal*, USA Today, Jan. 21, 2015. Copy supplied.

Matthew Daly, *VA settles more retaliation complaints by whistleblowers*, Assoc. Press, Jan. 20, 2015. Copy supplied.

Emily Wax-Thibodeaux, *Transgender federal employee wins historic discrimination case*, Wash. Post, Oct. 25, 2014. Copy supplied.

Jeff Schogol, *MRAP whistleblower scores victories in settlement with Corps*, Marine Corps Times, Oct. 6, 2014. Copy supplied.

David Hood, *VA whistleblower reports delays*, The Orange County Register, July 6, 2014. Copy supplied.

VA in a culture of denial, says special counsel, CBS News, June 23, 2014. Video available at https://www.cbsnews.com/amp/video/va-in-a-culture-of-denial-says-special-counsel.

Drew Griffin, Scott Bronstein and Nelli Black, *Fear kept the VA scandal a secret*, Cable News Network, June 5, 2014. Copy supplied.

Carolyn Lerner, Office of Special Counsel, Federal News Network, May 20, 2014. Audio available at https://federalnewsnetwork.com/tom-temin-federal-drive/2014/05/carolyn-lerner-office-of-special-counsel.

Jack Moore, *Whistleblower Cases Have Gone Through the Roof, even as OSC Faces Uncertain Budget*, Federal News Network, Dec. 2, 2013. Copy supplied.

Emily Wax-Thibodeaux, *Homeland Security Workers Routinely Boost Pay with Unearned Overtime, Report Says*, Wash. Post, Nov. 1, 2013. Copy supplied.

Joe Davidson, *Small Agency Struggles to Operate with all but Three Workers on Shutdown Furlough*, Wash. Post, Oct. 4, 2013. Copy supplied.

Joe Davidson, *Hatch Act Permits Range of Feds' Political Action*, Wash. Post, Sept. 25, 2012. Copy supplied.

Carrie Johnson, *Fast And Furious Whistle-blower Reaches Agreement Over Retaliation Claims*, National Public Radio, Aug. 7, 2012. Copy supplied.

Jerry Seper, *ATF whistleblower's revenge case settled*, Wash. Times, Aug. 7, 2012. Copy supplied.

Joe Davidson, *Under Carolyn Lerner, Special Counsel Office is Doing its Job, Observers Say*, Wash. Post, June 29, 2012. Copy supplied.

Michael O'Connell, *Lerner: FAA Failed to Respond Promptly to Whistleblowers' Concerns*, Federal News Network, May 10, 2012. Copy supplied.

Joe Davidson, *Senate passes whistleblower protections — again*, Wash. Post, May 10, 2012. Copy supplied.

Joe Davidson, *For Public Health Service officers, no protection for whistleblowing*, Wash. Post, Mar. 14, 2012. Copy supplied.

Joe Davidson, *Bill would update Hatch Act*, Wash. Post, Mar. 8, 2012. Copy supplied.

Michel Martin, *Tough Task of Protecting America's Whistleblowers*, National Public Radio, Jan. 5, 2012. Copy supplied.

Lisa Rein, *Special Counsel Carolyn Lerner Quickly Raises the Profile of her Office*, Wash. Post, Dec. 25, 2011. Copy supplied.

Carrie Johnson, *Government Whistleblowers Gain New Advocate*, National Public Radio, Nov. 22, 2011. Copy supplied.

Lerner: Lack of accountability at Dover, Cable News Network, Nov.10, 2011. Video available at https://www.cnn.com/2011/11/10/tv/lerner-lack-of-accountability-at-dover/index.html.

Tony Saavedra, *The whistle-blower who saved you money*, The Orange County Register, Nov. 13, 2011. Copy supplied.

Tom Bowman, *Air Force Morgue Admits Losing Troops' Body Parts*, National Public Radio, Nov. 8, 2011. Copy supplied.

Ed O'Keefe, *Is it Time to Update the Hatch Act*, Wash. Post, Oct. 19, 2011. Copy supplied.

Jack Moore, *Office of Special Counsel Wants Hatch Act Overhaul*, Federal News Network, Oct.12, 2011. Copy supplied.

Jolie Lee, *Two Whistleblowers get 45-day Stay after OSC Intervention*, Federal News Network, Oct. 14, 2011. Copy supplied.

Jolie Lee and Jack Moore, *OSC Comes to Defense of Two Federal Whistleblowers*, Federal News Network, Oct. 11, 2011. Copy supplied.

Josh Gerstein, *Hatch Act enforcer seeks reforms*, Politico, Oct. 6, 2011. Copy supplied.

Press Releases:

Press Release, *Shortcomings in Veterans Crisis Line and Nationwide VA Drug-Testing Protocols*, United States Office of Special Counsel, June 12, 2017. Copy supplied.

Press Release, *OSC Files Amicus Curiae Brief Opposing Additional Burden on Federal Employee Whistleblowers*, United States Office of Special Counsel, June 6, 2017. Copy supplied.

Press Release, *OSC Issues Two Reports on Hiring Violations at Federal Agencies*, United States Office of Special Counsel, May 17, 2017. Copy supplied.

Press Release, *Sen. Tester Introduces Major Bipartisan Reform Bill to Hold VA Accountable*, May 11, 2017. Copy supplied.

Press Release, *OSC Files Two Amicus Curiae Briefs Opposing Restrictions on Federal Employee Whistleblower Rights*, United States Office of Special Counsel, Apr. 18, 2017. Copy supplied.

Press Release, *OSC Obtains Stay Returning Navy Safety Manager to Job Pending Fuller Investigation*, United States Office of Special Counsel, Apr. 14, 2017. Copy supplied.

Press Release, *OSC Assists Federal Workers in National Guard and Reserves with Employment Claims*, United States Office of Special Counsel, Mar. 30, 2017. Copy supplied.

Press Release, *VA Inadequately Addresses Deficiencies in Cardiovascular Care at Chicago Area Hospital*, United States Office of Special Counsel, Mar. 9, 2017. Copy supplied.

Press Release, *OSC Supports Further Improvements to Federal Whistleblower Protections*, United States Office of Special Counsel, Feb. 1, 2017. Copy supplied.

Press Release, *OSC's Enforcement of the Anti-Gag Order Provision in Whistleblower Law*, United States Office of Special Counsel, Jan. 25, 2017. Copy supplied.

Press Release, *Phoenix VA Whistleblower Exposes Significant Patient Wait Times*, United States Office of Special Counsel, Jan. 10, 2017. Copy supplied.

Press Release, *Federal Agencies Are Required to Educate Employees on Whistleblower Protections*, United States Office of Special Counsel, Jan. 5, 2017. Copy supplied.

Press Release, *Interior Department Whistleblower Faced Retaliation After Angering Tribe on Gas Leases*, United States Office of Special Counsel, Dec. 15, 2016. Copy supplied.

Press Release, *After Whistleblower Disclosures, Phoenix VA Hospital Improves Care of Suicidal Veterans*, United States Office of Special Counsel, Dec. 6, 2016. Copy supplied.

Press Release, *OSC Resolves Atlanta VA Whistleblower Retaliation*, United States Office of Special Counsel, Oct. 20, 2016. Copy supplied.

Press Release, *Whistleblowers Reveal Deficient VA Benefit Claims Processing in Oakland*, United States Office of Special Counsel, Oct. 13, 2016. Copy supplied.

Press Release, *OSC Obtains Discipline Against Commerce*, United States Office of Special Counsel, Sep. 28, 2016. Copy supplied.

Press Release, *OSC Calls for Further Review of Whistleblower Disclosures on Zika Testing*, United States Office of Special Counsel, Sept. 27, 2016. Copy supplied.

Press Release, *OSC Obtains Discipline Against Commerce Department*, United States Office of Special Counsel, Sep. 27, 2016. Copy supplied.

Press Release, *After OSC Query, Commerce Reforms Administrative Leave Policy*, United States Office of Special Counsel, Sep. 20, 2016. Copy supplied.

Press Release, *Recent Cases Highlight Hatch Act's Prohibition on Federal Employees*, United States Office of Special Counsel, Sep. 19, 2016. Copy supplied.

Press Release, *Persistent Prescription Delays for VA Mental Health Patients in California*, United States Office of Special Counsel, Aug. 31, 2016. Copy supplied.

Press Release, *Joint Statement on National Whistleblower Appreciation Day*, United States Office of Special Counsel, Aug. 2, 2016. Copy supplied.

Press Release, OSC *Files Hatch Act Complaint Against Commerce Employee*, United States Office of Special Counsel, July 15, 2016. Copy Supplied.

Press Release, *OSC Obtains Discipline Against Three Federal Employees*, United States Office of Special Counsel, July 13, 2016. Copy supplied.

Press Release, *OSC Obtains Record-Breaking Results for Whistleblowers in FY 2015*, United States Office of Special Counsel, July 12, 2016. Copy supplied.

Press Release, *OSC Applauds House Passage of OSC Reauthorization Bill*, United States Office of Special Counsel, June 22, 2016. Copy supplied.

Press Release, *OSC Issues Gender Transition Policy Amidst LGBT Education Efforts*, United States Office of Special Counsel, June 15, 2016. Copy supplied.

Press Release, *Whistleblower Disclosures of Sanitation Problems in D.C. VA Hospital are Confirmed*, United States Office of Special Counsel, June 9, 2016. Copy supplied.

Press Release, *OSC Obtains Discipline Against Fish and Wildlife Service Managers for Whistleblower Retaliation*, United States Office of Special Counsel, June 7, 2016. Copy supplied.

Press Release, *Lawmakers blast VA wait time investigations as agency defends itself*, United States Office of Special Counsel, May 29, 2016. Copy supplied.

Press Release, *Senior OSC Attorney Honored for Public Service at 2016 Burton Awards for Legal Achievement*, United States Office of Special Counsel, May 23, 2016. Copy supplied.

Press Release, *High-Profile VA Whistleblower Settles Retaliation Claim*, United States Office of Special Counsel, May 6, 2016. Copy supplied.

Press Release, *OSC Finds Flaws in VA Investigations of Whistleblower Disclosures*, United States Office of Special Counsel, Apr. 27, 2016. Copy supplied.

Press Release, *OSC Amicus Briefs Argue Against Additional Burden in Whistleblower Cases*, United States Office of Special Counsel, Apr. 13, 2016. Copy supplied.

Press Release, *OSC Reports on Three VA Whistleblower Investigations*, United States Office of Special Counsel, Apr. 8, 2016. Copy supplied.

Press Release, *OSC Files Hatch Act Complaints with Merit Systems Protection Board*, United States Office of Special Counsel, Mar. 30, 2016. Copy supplied.

Press Release, *VA Whistleblowers Disclose Ongoing Mental Health Wait Times*, United States Office of Special Counsel, Feb. 25, 2016. Copy supplied.

Press Release, *Whistleblower Disclosures Improve Jet Fuel Safety at Marine Corps Base*, United States Office of Special Counsel, Feb. 24, 2016. Copy supplied.

Press Release, *OSC Opposes Narrowing Whistleblower Protections*, United States Office of Special Counsel, Feb. 10, 2016. Copy supplied.

Press Release, *OSC Urges Agencies to Become 2302(c) Certified*, United States Office of Special Counsel, Feb. 4, 2016. Copy supplied.

Press Release, *OSC Obtains Stay of Proposed Removal of a Federal Employee*, United States Office of Special Counsel, Feb. 2, 2016. Copy supplied.

Press Release, *Little Rock VA Whistleblower Discloses Wait Time Manipulation*, United States Office of Special Counsel, Dec. 11, 2015. Copy supplied.

Press Release, *Whistleblower Disclosures of Security Vulnerabilities at the Navy Yard are Confirmed*, United States Office of Special Counsel, Dec. 2, 2015. Copy supplied.

Press Release, *Whistleblower Identified Long-Standing Contracting Violations at an Agency*, United States Office of Special Counsel, Nov. 24, 2015. Copy supplied.

Press Release, *OSC Updates Hatch Act Guidance for Social Media*, United States Office of Special Counsel, Nov. 12, 2015. Copy supplied.

Press Release, *OSC Continues to Enforce USERRA in the Federal Sector*, United States Office of Special Counsel, Nov. 9, 2015. Copy supplied.

Press Release, *OSC Facilitates Settlement of a VA Whistleblower Reprisal Claim*, United States Office of Special Counsel, Nov. 3, 2015. Copy supplied.

Press Release, *OSC Investigation Leads to Settlement in Army Hospital Whistleblower Case*, United States Office of Special Counsel, Oct. 27, 2015. Copy supplied.

Press Release, *VA Needs to Improve Internal Accountability in Whistleblower Cases*, United States Office of Special Counsel, Sept. 17, 2015. Copy supplied.

Press Release, *FAA Confirms Whistleblower Disclosures of Flight Safety Risk*, United States Office of Special Counsel, Sept. 15, 2015. Copy supplied.

Press Release, *OSC Finds VA Retaliated Against Employee for Contacting Congress*, United States Office of Special Counsel, Sept. 8, 2015. Copy supplied.

Press Release, *Whistleblower Disclosures to OSC Lead to VA Reforms, 40 Disciplinary Actions against Responsible Officials*, United States Office of Special Counsel, July 29, 2015. Copy supplied.

Press Release, *OSC Secures Relief for Additional VA Whistleblowers*, United States Office of Special Counsel, July 22, 2015. Copy supplied.

Press Release, *Recent OSC Efforts to Stop LGBT Discrimination in the Federal Workplace*, United States Office of Special Counsel, June 24, 2015. Copy supplied.

Press Release, *MSPB Orders Removal of Employee for Hatch Act Violations*, United States Office of Special Counsel, June 18, 2015. Copy supplied.

Press Release, *Agencies Release Guide on LGBT Discrimination Protections for Federal Workers*, United States Office of Special Counsel, June 3, 2015. Copy supplied.

Press Release, *OSC Facilitates Settlement for Federal LGBT Employee in Discrimination Case*, United States Office of Special Counsel, May 12, 2015. Copy supplied.

Press Release, *OSC Obtains Relief for TSA Whistleblowers Who Disclosed Security Risks,* United States Office of Special Counsel, Apr. 29, 2015. Copy supplied.

Press Release, *VA Hospital Improperly Substituted Mental Health Drugs to Save Money*, United States Office of Special Counsel, Apr. 22, 2015. Copy supplied.

Press Release, *OSC Helps Protect More VA Whistleblowers*, United States Office of Special Counsel, Apr. 09, 2015. Copy supplied.

Press Release, *New Associate Special Counsel Joins OSC Leadership*, United States Office of Special Counsel, Apr. 2, 2015. Copy supplied.

Press Release, *OSC Secures Relief for Bonneville Power Administration Whistleblowers*, United States Office of Special Counsel, Apr. 2, 2015. Copy supplied.

Press Release, *OSC Helps Federal Bureau of Prisons Whistleblowers*, United States Office of Special Counsel, Mar. 31, 2015. Copy supplied.

Press Release, *Whistleblower Disclosures Lead to Border Patrol Reforms and $100 Million in Savings,* United States Office of Special Counsel, Mar. 12, 2015. Copy supplied.

Press Release, *OSC: Supreme Court Decision in DHS v. MacLean Upholds Whistleblower Protections*, United States Office of Special Counsel, Jan. 21, 2015. Copy supplied.

Press Release, *OSC Obtains Relief for More VA Whistleblowers*, United States Office of Special Counsel, Jan. 20, 2015. Copy supplied.

Press Release, *OSC Files Disciplinary Complaint Against USDA Senior Official for Hatch Act Violations*, United States Office of Special Counsel, Jan. 13, 2015. Copy supplied.

Press Release, *OSC Blocks the Removal of a TSA Inspector in South Carolina*, United States Office of Special Counsel, Dec. 17, 2014. Copy supplied.

Press Release, *OSC Reinstates a Federal Bureau of Prisons Physician in Brooklyn*, United States Office of Special Counsel, Dec. 11, 2014. Copy supplied.

Press Release, *OSC Honors Three VA Whistleblowers with 'Public Servant of the Year' Award*, United States Office of Special Counsel, Dec. 3, 2014. Copy supplied.

Press Release, *OSC Files Complaint for Disciplinary Action in Hatch Act Case*, United States Office of Special Counsel, Oct. 24, 2014. Copy supplied.

Press Release, *OSC Obtains Corrective Action for Transgender Federal Employee*, United States Office of Special Counsel, Oct. 23, 2014. Copy supplied.

Press Release, *After OSC Investigation, Army Changes Security Regulation Relating to Sexual Orientation*, United States Office of Special Counsel, Oct. 16, 2014. Copy supplied.

Press Release, *OSC Obtains Stay of Removal of Army Police Whistleblower*, United States Office of Special Counsel, Oct. 10, 2014. Copy supplied.

Press Release, *OSC Files First Supreme Court Amicus Brief to Help Protect Whistleblower Rights*, United States Office of Special Counsel, Sept. 30, 2014. Copy supplied.

Press Release, *Phoenix VAMC Whistleblowers Obtain Significant Settlements*, United States Office of Special Counsel, Sept. 29, 2014. Copy supplied.

Press Release, *High-Profile Marine Corps Whistleblower Settles Case through Mediation*, United States Office of Special Counsel, Sept. 25, 2014. Copy supplied.

Press Release, *OSC Blocks Termination of Slaughterhouse Whistleblower*, United States Office of Special Counsel, Aug. 21, 2014. Copy supplied.

Press Release, *OSC Urges the Federal Circuit to Protect Whistleblower Due Process Rights*, United States Office of Special Counsel, Aug. 14, 2014. Copy supplied.

Press Release, *OSC Obtains Disciplinary Action in Two Hatch Act Cases*, United States Office of Special Counsel, July 10, 2014. Copy supplied.

Press Release, *OSC Combats LGBT Discrimination in the Federal Workplace*, United States Office of Special Counsel, June 30, 2014. Copy supplied.

Press Release, *OSC Cites Deficiencies in VA Health Care Reports*, United States Office of Special Counsel, June 23, 2014. Copy supplied.

Press Release, *OSC Investigating 37 Claims of Whistleblower Reprisal at the VA*, United States Office of Special Counsel, June 5, 2014. Copy supplied.

Press Release, *OSC Obtains Disciplinary Action in Two Hatch Act Cases*, United States Office of Special Counsel, Apr. 29, 2014. Copy supplied.

Press Release, *New Associate Special Counsel for Investigation and Prosecution Joins OSC*, United States Office of Special Counsel, Apr. 23, 2014. Copy supplied.

Press Release, *Statement on 25th Anniversary of the Whistleblower Protection Act*, United States Office of Special Counsel, Apr. 10, 2014. Copy supplied.

Press Release, *OSC Enforces Hatch Act in a Series of IRS Cases*, United States Office of Special Counsel, Apr. 9, 2014. Copy supplied.

Press Release, *OSC Pursues Discipline for Homeland Security Officials Alleged to Have Violated Civil Service Laws; Special Counsel Utilizing 2012 Enhancements to the Whistleblower Protection Act*, United States Office of Special Counsel, Apr. 9, 2014. Copy supplied.

Press Release, *OSC Announces New Deputy Special Counsel for Litigation and Legal Affairs*, United States Office of Special Counsel, Apr. 7, 2014. Copy supplied.

Press Release, *Federal Employee Violates Hatch Act Through Twitter*, United States Office of Special Counsel, Feb. 4, 2014. Copy supplied.

Press Release, *Office of Special Counsel Settles Hatch Act Cases*, United States Office of Special Counsel, Feb. 3, 2014. Copy supplied.

Press Release, *Whistleblower Disclosure of Wasteful Army Contracts Leads to Recovery of $1.1 Million*, United States Office of Special Counsel, Jan. 15, 2014. Copy supplied.

Press Release, *Report Released on Former Special Counsel Scott Bloch*, United States Office of Special Counsel, Dec. 18, 2013. Copy supplied.

Press Release, *OSC Settles Retaliation Case for Park Rangers*, United States Office of Special Counsel, Dec. 11, 2013. Copy supplied.

Press Release, *OSC Successfully Resolves Service Members' Employment Complaints*, United States Office of Special Counsel, Nov. 4, 2013. Copy supplied.

Press Release, *Department of Homeland Security Abuses Overtime Payments*, United States Office of Special Counsel, Nov. 1, 2013. Copy supplied.

Press Release, *OSC Gets Relief for Veteran whose Employment Preference Right were Violated*, United States Office of Special Counsel, Oct. 29, 2013. Copy supplied.

Press Release, *OSC Obtains Relief for TSA Whistleblowers at Syracuse Airport After Retaliation*, United States Office of Special Counsel, Oct. 22, 2013. Copy supplied.

Press Release, *Veterans Hospital in Jackson, Mississippi Still Deficient*, United States Office of Special Counsel, Sept. 18, 2013. Copy supplied.

Press Release, *Statement in Response to Ruling on Kaplan v. Conyers*, United States Office of Special Counsel, Aug. 21, 2013. Copy supplied.

Press Release, *OSC Urges Ninth Circuit: Apply Full Whistleblower Protections in Pending Cases*, United States Office of Special Counsel, May 13, 2013. Copy supplied.

Press Release, *Veterans Administration Commits to Better Maintenance of Medical Records*, United States Office of Special Counsel, Apr. 16, 2013. Copy supplied.

Press Release, *Special Counsel Reports Concerns about Mississippi Veterans Hospital to the White House and Congress*, United States Office of Special Counsel, Mar. 18, 2013. Copy supplied.

Press Release, *OSC Urges Federal Circuit to Uphold Whistleblower Protections*, United States Office of Special Counsel, Mar. 14, 2013. Copy supplied.

Press Release, *OSC Urges MSPB: Apply Full Whistleblower Protections in Pending Cases*, United States Office of Special Counsel, Feb. 21, 2013. Copy supplied.

Press Release, *Congress Modernizes the Hatch Act*, United States Office of Special Counsel, Dec. 19, 2012. Copy supplied.

Press Release, *OSC Resolves Cases of Prohibited Personnel Practices*, United States Office of Special Counsel, Dec. 18, 2012. Copy supplied.

Press Release, *OSC Applauds Senate Passage of Hatch Act Reforms*, United States Office of Special Counsel, Nov. 30, 2012. Copy supplied.

Press Release, *OSC Granted Stay in Challenge to Commerce Department Gag Clauses*, United States Office of Special Counsel, Nov. 30, 2012. Copy supplied.

Press Release, *Landmark Whistleblower Legislation Becomes Law*, United States Office of Special Counsel, Nov. 27, 2012. Copy supplied.

Press Release, *Special Counsel Lauds Passage of Stronger Whistleblower Protections*, United States Office of Special Counsel, Nov. 13, 2012. Copy supplied.

Press Release, *Border Patrol Agent Settles Claim of Whistleblower Retaliation*, United States Office of Special Counsel, Oct. 24, 2012. Copy supplied.

Press Release, *OSC Helps Wisconsin National Guardsman*, United States Office of Special Counsel, Sept. 24, 2012. Copy supplied.

Press Release, *OSC Concludes Hatch Act Investigation of Secretary Sebelius*, United States Office of Special Counsel, Sept. 12, 2012. Copy supplied.

Press Release, *Two ATF "Fast and Furious" Whistleblowers Settle Cases*, United States Office of Special Counsel, Sept. 11, 2012. Copy supplied.

Press Release, *Merit Systems Protection Board Grants Stay for U.S. Army Whistleblowers*, United States Office of Special Counsel, Sept. 7, 2012. Copy supplied.

Press Release, *Two Federal Employees to Serve Suspensions for Violating the Hatch Act*, United States Office of Special Counsel, Aug. 17, 2012. Copy supplied.

Press Release, *Whistleblower Settles Case with ATF*, United States Office of Special Counsel, Aug. 7, 2012. Copy supplied.

Press Release, *Hatch Act Modernization Act Approved by Senate Committee*, United States Office of Special Counsel, June 29, 2012. Copy supplied.

Press Release, *Special Counsel Presents Public Servant of the Year Award*, United States Office of Special Counsel, June 28, 2012. Copy supplied.

Press Release, *OSC Urges Agencies To Heed Whistleblower Rights When Monitoring Employee Communications*, United States Office of Special Counsel, June 20, 2012. Copy supplied.

Press Release, *Special Counsel Encouraged by Disciplinary Actions for Retaliation at Port Mortuary*, United States Office of Special Counsel, May 21, 2012. Copy supplied.

Press Release, *Special Counsel Calls for Stronger DOT Oversight of Airline Safety*, United States Office of Special Counsel, May 8, 2012. Copy supplied.

Press Release, *Two Veterans Affairs Employees Serve Suspensions for Violating the Hatch Act*, United States Office of Special Counsel, Mar. 23, 2012. Copy supplied.

Press Release, *OSC Releases Report Detailing Retaliation Against Port Mortuary Whistleblowers*, United States Office of Special Counsel, Mar. 16, 2012. Copy supplied.

Press Release, *OSC Applauds Introduction of Hatch Act Modernization Act of 2012*, United States Office of Special Counsel, Mar. 7, 2012. Copy supplied.

Press Release, *Statement Regarding Resignation of U.S Mortuary Official Keel*, United States Office of Special Counsel, Mar. 2, 2012. Copy supplied.

Press Release, *OSC Response to Reforms and Corrective Action at Air Force's Port Mortuary*, United States Office of Special Counsel, Feb. 28, 2012. Copy supplied.

Press Release, *Office of Special Counsel Broadens Investigation into FDA's Surveillance of Employees' E-mail*, United States Office of Special Counsel, Feb. 15, 2012. Copy supplied.

Press Release, *Special Counsel Announces Whistleblower Settlement with IRS*, United States Office of Special Counsel, Feb. 8, 2012. Copy supplied.

Press Release, *Special Counsel Sends Whistleblower Retaliation Report to Air Force*, United States Office of Special Counsel, Jan. 31, 2012. Copy supplied.

Press Release, *Whistleblower Cites Poor Lab Procedures in Veterans Hospital*, United States Office of Special Counsel, Dec. 2, 2011. Copy supplied.

Press Release, *VA Hospital in Northport, N.Y. Ran Unaccredited Residency Training Program in Nuclear Medicine for Three Years*, United States Office of Special Counsel, Nov. 30, 2011. Copy supplied.

Press Release, *Special Counsel Commends MSPB Study on Whistleblowing*, United States Office of Special Counsel, Nov. 22, 2011. Copy supplied.

Press Release, *Special Counsel Applauds Action on Franz Gayl*, United States Office of Special Counsel, Nov. 16, 2011. Copy supplied.

Press Release, *Special Counsel Calls Conduct at U.S. Military's Mortuary "Deeply Troubling,"* United States Office of Special Counsel, Nov. 8, 2011. Copy supplied.

Press Release, *OSC Announces Corrective and Disciplinary Actions in Retaliation Complaint at Defense Contract Audit Agency*, United States Office of Special Counsel, Nov. 4, 2011. Copy supplied.

Press Release, *OSC Seeks Quick Action to Protect Two Public Health and Safety Whistleblowers*, United States Office of Special Counsel, Oct. 8, 2011. Copy supplied.

Press Release, *Office of Special Counsel Calls for Hatch Act Overhaul*, United States Office of Special Counsel, Oct. 6, 2011. Copy supplied.

Press Release, *Special Counsel Announces That Department of Energy Violated Whistleblower's Due Process Rights by Suspending Him for 13 Months*, United States Office of Special Counsel, Aug. 11, 2011. Copy supplied.

Press Release, *Special Counsel Launches New Project to Protect Federal Job Rights of Service Members*, United States Office of Special Counsel, Aug. 9, 2011. Copy supplied.

Press Release, *Special Counsel Announces Settlement in U.S. Customs and Border Protection Whistleblower Case*, United States Office of Special Counsel, July 21, 2011. Copy supplied.

Press Release, *Special Counsel Lerner Announces That OSC has Obtained an Order from the U.S Merit Systems Protection Board That Stays the Firing of a Federal Whistleblower*, United States Office of Special Counsel, July 6, 2011. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never held judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Special Counsel, United States Office of Special Counsel, Washington, District of Columbia (2011 – 2016). Appointed by President Barack Obama.

Special Counsel, United States Office of Special Counsel, Washington, District of Columbia (2016). Nominated by President Barack Obama.

Special Counsel, United States Office of Special Counsel, Washington, District of Columbia (2017). Carry-over term pursuant to 5 U.S.C. § 1211(b).

Special Counsel, United States Office of Special Counsel, Washington, District of Columbia (2017). Nominated by President Barack Obama.

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.

Staff Member, United States Senate Campaign for Donald Riegle, Oakland County, Michigan (1982).

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 1989 to 1991, I served as law clerk to the Honorable Julian Abele Cook, Jr., Chief United States District Judge, United States District Court for the Eastern District of Michigan.

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.

1991 – 1997
Kator, Scott, Heller and Huron (dissolved 1997)
1275 K Street, Northwest
Washington, District of Columbia 20008
Associate

1997 – 2011
Heller, Huron, Chertkof, Lerner, Simon & Salzman
1730 M Street, Northwest, Suite 412
Washington, District of Columbia 20036
Partner

2011 – 2017
United States Office of Special Counsel
1730 M Street, Northwest, Suite 300
Washington, District of Columbia 20036
United States Special Counsel

2017 – present
Appellate and District Court Mediation Programs
United States Circuit Court for the District of Columbia Circuit
Room 5732
333 Constitution Avenue, Northwest
Washington, District of Columbia 20001
Chief Circuit Mediator

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.

From 2017 to the present, I have served as the Chief Circuit Mediator for the United States Court of Appeals for the District of Columbia Circuit. In this role, I supervise a panel of approximately 100 volunteer mediators and two full-time staff mediators. Annually, there are approximately 50 to 60 active cases in the District Court and 50 to 60 active cases in the Court of Appeals. I personally mediate approximately ten cases each year. Because of confidentiality requirements, I cannot provide details of the matters I have mediated. However, I generally mediate complex civil cases in the areas of employment and civil rights involving private sector, District of Columbia, and federal defendants.

From approximately 2002 to 2010, I served as a volunteer mediator for the District of Columbia Human Rights Commission, the Equal Employment Opportunity Commission, and the United States District Court for the District of Columbia. I mediated employment and civil rights cases involving private sector, District of Columbia, and federal defendants. I do not have records of the cases that I mediated, nor am I authorized to provide details of these cases given confidentiality requirements.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

In 1991, I began working as an associate attorney at Kator, Scott, Heller and Huron, an employment and civil rights law firm. I stayed at that firm until 1997, when five partners and I founded the firm Heller, Huron, Chertkof, Lerner, Simon & Salzman (now "Heller, Huron, Chertkof & Salzman"). At both of these firms, I primarily litigated employment discrimination and civil rights cases in federal court, the District of Columbia Superior Court, and before administrative agencies such as the EEOC, the Merit Systems Protection Board, and the District of Columbia Human Rights Commission. I also represented non-profit organizations

and small businesses in litigation, as well as general employment law matters such as counseling and investigations. While at my firm, I was appointed by a United States District Court judge to serve as Special Inspector for Sexual Harassment and Retaliation at the District of Columbia Department of Corrections. This position was created by the consent decree in *Neal v. D.C. Department of Corrections*, a class action brought to remedy sexual harassment and retaliation.

In 2011, I left private practice to accept a Presidential appointment as head of the United States Office of Special Counsel (OSC). OSC was created in 1978 as part of the Civil Service Reform Act. Its primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. The agency also takes disclosures of waste, fraud and abuse and other wrongdoing from within the executive branch of the federal government, and enforces the Whistleblower Protection Enhancement Act, the Uniformed Services Employment and Reemployment Rights Act and the Hatch Act. I served one five-year term, with a carry-over term of one year.

In 2017, I became the Chief Circuit Mediator for the federal courts in the D.C. Circuit, and it is the position I presently hold. In this role, I manage the mediation program for the United States Court of Appeals for the District of Columbia Circuit and the United States District and Bankruptcy Courts for the District of Columbia. I supervise approximately 100 senior lawyers who serve as volunteer mediators for the courts, as well as Mediation Program staff. I also mediate a substantial number of cases myself. Within the first year of my tenure, settlement rates doubled; in the past three years, the number of Court of Appeals cases in mediation has also nearly doubled.

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

While in private practice, my typical clients were individual employees in the private sector or federal government, and to a lesser extent, non-profit organizations and small businesses. I also performed investigations on behalf of government agencies on workplace issues. When I was the Special Inspector for the District of Columbia Department of Corrections, my "client" was the United States District Court Judge for whom I served in implementing the consent decree in *Neal v. Department of Corrections*.

In my role as United States Special Counsel, my "client" was the United States and the merit system for federal civilian employees.

As Chief Circuit Mediator, my "clients" are the judges and parties who

appear before them in civil cases in the United States Court of Appeals for the District of Columbia Circuit and the United States District and Bankruptcy Courts for the District of Columbia.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As an associate at Kator, Scott & Heller from 1991 until 1997, my practice consisted almost entirely of litigation. As a partner at Heller, Huron, Chertkof, Lerner, Simon & Salzman, my practice included litigation as well as counseling and investigations on employment matters. When I became Special Master in the *Neal v. D.C. Department of Corrections* matter, that work required the majority of my time. After my appointment to head the U.S. Office of Special Counsel, I supervised significant litigation and made decisions about which cases my agency should litigate, though I did not personally appear as counsel in the litigation. As Chief Circuit Mediator, I do not litigate or appear in court.

i. Indicate the percentage of your practice in:

1. federal courts:	25% (approximate)
2. state courts of record:	25% (approximate)
3. other courts:	0%
4. administrative agencies:	50% (approximate)

ii. Indicate the percentage of your practice in:

1. civil proceedings:	95% (approximate)
2. criminal proceedings:	5% (approximate)

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried two cases to verdict before juries as an associate counsel and six cases to final decision before administrative law judges as both an associate counsel and sole or chief counsel.

i. What percentage of these trials were:

1. jury:	25%
2. non-jury:	75%

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.

When I was Special Counsel, I was counsel of record on an amicus brief the Office of Special Counsel (OSC) filed in *DHS v. MacLean*, 135 S. Ct. 913 (2015). 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.

Although I worked on many litigation matters during my time as an attorney in private practice, I no longer have records of these matters. Based on my recollection and searches of publicly available records, I have identified the following litigation matters from private practice, as well as cases in which I filed amicus briefs as Special Counsel:

1. *Acha v. Dept. of Agriculture*, 841 F.3d 878 (10th Cir. 2016)

This case addressed whether an employee's disclosures were made within their "normal course of duties," and whether employees should be subject to heightened scrutiny under 5 U.S.C. § 2302(f)(2) and pursuant to the Whistleblower Protection Enhancement Act (WPEA). The plaintiff was a Forest Service purchasing clerk who disclosed violations of federal acquisition rules. On behalf of the Office of Special Counsel (OSC) I filed an amicus brief with the Tenth Circuit addressing the scope of the WPEA. As Special Counsel, I had final authority to approve the OSC position and reviewed and approved the final amicus brief. Although OSC's position did not prevail in the litigation, I subsequently recommended that Congress clarify that this additional burden in the WPEA applies only to the small subset of federal workers who investigate and report wrongdoing as their principal job functions. Congress agreed and provided a legislative fix in the Office of Special Counsel Reauthorization Act of 2017.

Dates of representation: 2015 – 2016

Panel: U.S. Circuit Judges Carlos Lucero, Robert Bacharach, Bobby Ray Baldock

Co-Counsel:

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Counsel for Defendant:

Emma Bond
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P.O. Box 7860
Portland, ME 04112
(207) 774-5444

2. *Benton-Flores v. Dep't of Def.*, 121 M.S.P.R. 428 (2014)

This case addressed whether an employee's disclosures were made within their "normal course of duties," and whether employees should be subject to heightened scrutiny under 5 U.S.C. § 2302(f)(2) and pursuant to the Whistleblower Protection Enhancement Act (WPEA). The plaintiff was a federal teacher who was fired after reporting the potential mistreatment of students. On behalf of the Office of Special Counsel (OSC) I filed an amicus brief with the Merit Systems Protection Board (MSPB). As Special Counsel, I had final authority to approve the OSC position and reviewed and approved the final amicus brief. Although OSC's position did not prevail, I subsequently recommended that Congress clarify that the additional burden of proof in the WPEA applies only to the small subset of federal workers who investigate and report wrongdoing as their principal job function. Congress agreed and provided a legislative fix in the Office of Special Counsel Reauthorization Act of 2017.

Dates of representation: 2014 – 2016

Panel: Administrative Law Judges Susan Tsui Grundmann, Anne Wagner, and Mark Robbins

Co-Counsel:

Louis Lopez
United States Office of Special Counsel
1730 M Street, Northwest
Suite 300
Washington, DC 20036
(202) 254-3632

Elisabeth R. Brown
United States Office of Special Counsel
San Francisco Bay Area Field Office
1301 Clay Street
Oakland, CA 94612
(510) 637-3464

Counsel for Plaintiff:

Christopher Bonk
Gilbert Employment Law, P.C.
The Colonnade at Station Square
1100 Wayne Avenue, Suite 900
Silver Spring, MD 20910
(301) 608-0880

Counsel for Defendant:

Carla Eldred
Department of Defense Dependents Schools, Europe
Office of the General Counsel
Unit 29649, Box 7000
APO AE 09002
(314) 380-7813

3. *DHS v. MacLean*, 135 S. Ct. 913 (2015)

Federal law generally provides whistleblower protections to federal employees who disclose misconduct unless the disclosure is specifically prohibited by law. The question in this case was whether a disclosure by a Federal Air Marshal concerning potential threats to airline safety was specifically prohibited by law. On behalf of the Office of Special Counsel (OSC), I filed an amicus brief in support of the employee arguing that the disclosure was not prohibited by law. As Special Counsel, I had final authority to

approve OSC's position and reviewed and approved the final amicus brief. The Supreme Court ultimately agreed with OSC's position and held that the disclosure was not prohibited by law and that the employee was entitled to whistleblower protections.

Dates of representation: 2014 – 2015

Co-Counsel:

Bruce D. Fong
United States Office of Special Counsel
1730 M Street, Northwest
Suite 300
Washington, DC 20036
(202) 254-3632

Elisabeth R. Brown
United States Office of Special Counsel
San Francisco Bay Area Field Office
1301 Clay Street
Oakland, CA 94612
(510) 637-3464

Counsel for Plaintiff:

Donald Verrilli, Jr.
Munger, Tolles and Olson LLP
601 Massachusetts Avenue, Northwest, Suite 500 E
Washington, DC 20001
(202) 220-1101

Ian Gershengorn
Jenner and Block
1099 New York Avenue, Northwest, Suite 900
Washington, DC 20001
(202) 639-6869

Counsel for Defendant:

Neal Kumar Katyal
Hogan Lovells
555 Thirteenth Street, Northwest
Washington, DC 20004
(202) 637-5528

Louis Alan Clark
Government Accountability Project

1612 K Street, Northwest
Suite 1100
Washington, DC 20006
(202) 457-0034

4. *Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013) (en banc)

In *Department of Navy v. Egan*, 484 U.S. 518 (1988), the Supreme Court limited the Merit Systems Protection Board's review over security clearance determinations. The question presented was whether *Egan* applied to low-level Defense Department civilian employees who do not hold security clearances, but still hold sensitive positions. On behalf of the Office of Special Counsel (OSC), I filed an amicus brief in support of the employees whose positions were designated as "sensitive." As Special Counsel, I approved OSC's position and reviewed and approved the final amicus brief. The en banc Federal Circuit held that the Board had no authority to review decisions relating to employees holding "sensitive" positions.

Dates of representation: 2012 – 2013

Co-Counsel:

Elisabeth R. Brown
United States Office of Special Counsel
San Francisco Bay Area Field Office
1301 Clay Street
Oakland, CA 94612
(510) 637-3464

Counsel for Petitioner:

Marleigh D. Dover
Charles W. Scarborough
Abby Christine Wright
United States Department of Justice
Appellate Branch, Civil Division
950 Pennsylvania Avenue, Northwest
Washington, DC 20045
(202) 305-1754

Douglas Letter
Office of General Counsel
United States House of Representatives
5140 O'Neill House Office Building
Washington, DC 20515
(202) 225-9700

Jeanne Davidson
Allison Kidd-Miller
United States Department of Justice
Commercial Litigation Branch, Civil Division
P.O. Box 7146
Ben Franklin Station
Washington, DC 20044
(202) 616-8277

Robert James Girouard
Office of Personnel Management
Office of General Counsel
1900 E Street, Northwest
Washington, DC 20415
(202) 606-1700

Counsel for Respondents Conyers and Northhover:

Andres Myles Grajales
American Federation of Government Employees
Office of General Counsel
10th Floor, 80 F Street, Northwest
Washington, DC 20001
(202) 639-6426

Counsel for Respondent Merit Systems Protection Board:

Jeffrey Gauger
Merit Systems Protection Board
1615 M Street, Northwest
Washington, DC 20419
(202) 254-4488

5. *Navab-Safavi v. Broad. Bd. of Gov.*, 650 F. Supp. 2d 40 (D.D.C. 2009), *aff'd, Glassman*, 637 F.3d 311 (D.C. Cir. 2011)

The plaintiff, a contractor for the Voice of America, Broadcasting Board of Governors, was terminated following her appearance in a music video criticizing the United States' involvement in Iraq. She alleged First and Fifth Amendment claims. I represented the plaintiff and participated in all aspects of the litigation. The district court denied the defendant's motion to dismiss, and defendants then filed an interlocutory appeal. At that point, I withdrew from the case in light of my pending Office of Special Counsel nomination. The D.C. Circuit affirmed the district court's order and remanded the case for further proceedings, after which the case eventually settled.

Dates of representation: 2008 – 2011

Presiding Judge: U.S. District Judge Ellen Huvelle (retired)

Panel: U.S. Circuit Judges David Sentelle, Merrick Garland (retired), and Stephen Williams (deceased)

Co-Counsel:

Richard Salzman
Heller, Huron, Chertkof & Salzman PLLC
1730 M Street, Northwest, Suite 412
Washington, DC 20036
(202) 293-8090

Counsel for Defendants:

The Honorable Robin Meriweather
United States Magistrate Judge
United States District Court for the District of Columbia
333 Constitution Avenue, Northwest
Washington, DC 20001
(202) 216-3270

Craig Lawrence
United States Attorney's Office
for the District of Columbia
Judiciary Center Building
555 Fourth Street, Northwest
Washington, DC 20530

6. *Neal v. District of Columbia Dep't of Corrections*, No. 93-cv-2420 (D.D.C. 1999)

This case involved a class action brought by female guards alleging sexual harassment and retaliation. I served as the court-appointed Special Inspector (special master) to implement the subsequently ordered consent decree. In addition to significant monetary damages, the settlement established an Office of Special Inspector within the District of Columbia Department of Corrections. As Special Inspector, I had authority to discipline employees, provide injunctive relief, create and implement training programs, and set new policies and procedures for the Department of Corrections.

Dates of representation: 2003 – 2005

Presiding Judge: U.S. District Judge Royce Lamberth

Counsel for Plaintiffs:

Joseph M. Sellers
Cohen Milstein
1100 New York Avenue, Northwest
Fifth Floor
Washington, DC 20005
(202) 408-4604

Ted Justice Williams
Law Office of Ted J. Williams
1200 G Street, Northwest
Suite 800
Washington, DC 20005
(202) 434-8744

Avis E. Buchanan
Public Defender Service for the District of Columbia
633 Indiana Avenue, Northwest
Suite 555
Washington, DC 20004
(202) 628-1200

Jeffrey Fred Liss (deceased)

Mary Elizabeth Gately
DLA Piper
500 Eighth Street, Northwest
Washington, DC 20004
(202) 799-4507

Roger E. Warin
Steptoe & Johnson LLP
1330 Connecticut Avenue, Northwest
Washington, DC 20036
(202) 429-6280

Counsel for Defendants:

Ellen A. Efros
Council of the District of Columbia
Office of the General Counsel
1350 Pennsylvania Avenue, Northwest
Suite 4
Washington, DC 20004
(202) 724-7820

George C. Valentine (deceased)

Maria-Claudia T. Amato
Office of the Attorney General for the District of Columbia
2000 14th Street, Northwest
Suite 756
Washington, DC 20009
(202) 671-2037

William Johnson Earl, Jr.
Nancy S. Schultz
Office of the Attorney General for the District of Columbia
441 Fourth Street, Northwest
6th Floor South
Washington, DC 20001
(202) 724-6152

Bruce Edward Brennan (retired)

Carol Elaine Burroughs
Current Address Unknown

Lisa Annette Bell
Best Best & Krieger
1800 K Street, Northwest
Suite 725
Washington, DC 20006
(202) 370-5314

Mark D. Back
General Counsel for District of Columbia Department on Disability Services
250 E Street, Southwest
Washington, DC 20024
(202) 730-1700

Michael F. Wasserman
3602 14th Street, North
Arlington, VA 22201
(202) 552-1695

7. *Wu v. Secretary of the Treasury*, No. 03-cv-00204 (D.D.C. 2003)

The plaintiff was a manager at the Internal Revenue Service and was subjected to a series of adverse employment actions after assisting a subordinate with a Title VII complaint. The plaintiff filed suit under Title VII and the Rehabilitation Act of 1973. I represented the plaintiff as lead counsel and participated in all aspects of the litigation. Before filing her case in court, I also represented the plaintiff through an internal agency hearing and

administrative proceedings before the Equal Employment Opportunity Commission. The matter settled after eighteen months of litigation.

Dates of representation: 2003 – 2004

Presiding Judge: U.S. District Judge Richard Roberts (retired)

Co-Counsel:

Elizabeth Grdina
Mooney, Green, Saindon, Murphy & Welch
1920 L Street, Northwest
Suite 400
Washington, DC 20036
(202) 783-0010

Counsel for Defendant:

Pamela Huff
Current Address Unknown

8. *Zaneski v. Am. Univ.*, No. 99-cv-00234 (D.D.C. 1999)

The plaintiff, a student at American University, filed this Title IX suit against a professor with a long history of sexual harassment complaints by female students that were never addressed by university officials. This was the first Title IX case brought in the District of Columbia involving the sexual harassment of a student by a professor. I represented the plaintiff as lead counsel in an administrative hearing at the university, as well as in litigation. I participated in all aspects of the case. After a year of litigation, the parties settled the case.

Dates of representation: 1998-1999

Presiding Judge: U.S. District Judge Thomas Flannery (deceased)

Counsel for Defendant:

Harry Carleton
Current Address Unknown

Hisham Khalid
American University
Office of General Counsel
4400 Massachusetts Avenue, Northwest
Washington, DC 20016
(202) 885-3285

9. *Sullivan v. Marriott Int'l*, No. 95-cv-3082 (D. Md. 1996)

The plaintiff was terminated after carrying a high-risk pregnancy necessitating bed rest from the 19th week of pregnancy until her baby was born. This matter was the first case filed under the federal Family and Medical Leave Act of 1993 in Maryland. I represented the plaintiff as co-counsel and participated in all aspects of the litigation. The matter settled after more than a year of litigation and a motion for adverse inference and a dispositive motion were decided in the plaintiff's favor.

Dates of representation: 1995 – 1996

Presiding Judge: U.S. District Judge Peter J. Messitte

Co-Counsel:

Douglas Huron (deceased)
Heller, Huron, Chertkof, Lerner, Simon & Salzman
1730 M Street, Northwest, Suite 412
Washington, DC 20036
(202) 293-8090

James Heller (deceased)

Counsel for Defendant:

Carlton Trosclair
Current Address Unknown

Teresa Diaz
Current Address Unknown

10. *Siegel v. Am. Ins. Assoc.*, No. CA14414-93 (D.C. Sup. Ct. 1996), *appeal filed*, Nos. 96-CV-1225 & 96-CV-1269 (D.C. 1997)

The plaintiff filed suit after she was terminated while on maternity leave. This was the first case of its kind brought under the District of Columbia Family and Medical Leave Act and the District of Columbia Human Rights Act. I represented the plaintiff. I participated in all aspects of the litigation and served as co-counsel at trial, during which I examined several witnesses and argued motions in limine and other evidentiary motions. The jury returned a verdict for the plaintiff. The defendant appealed, but the parties then settled the case.

Dates of representation: 1994 – 1998

Presiding Judge: Judge Mary Ellen Abrecht (deceased)

Co-Counsel:

James Heller (deceased)

Counsel for Defendants:

Barbara Berish Brown
Paul Hastings LLP
2050 M Street, Northwest
Washington, DC 20036
(202) 551-1717

Kenneth Willner
Paul Hastings LLP
2050 M Street, Northwest
Washington, DC 20036
(202) 551-0120

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As head of the U.S. Office of Special Counsel, I managed a staff of approximately 150 employees (including 100 attorneys) and a budget of $26 million. During my tenure, I managed the highest caseload and had the highest number of favorable outcomes in OSC history. I reduced operation costs by 40% and streamlined the process for handling thousands of Veterans Affairs whistleblower and retaliation cases. I also worked with Congress to pass the Whistleblower Protection Enhancement Act, the Hatch Act Modernization Act, and overtime reforms at the Department of Homeland Security, which saved $100 million annually. While at OSC, I served on the Council of Inspectors General Integrity Committee.

The following are three of the most significant matters which I pursued as Special Counsel:

My leadership on the Office of Special Counsel's work with Veterans Affairs (VA) whistleblowers improved the quality of care for veterans nationwide. In numerous reports to the President and Congress, I documented a pattern of serious threats to patient care at VA hospitals throughout the country. This led to an overhaul of the VA's internal medical oversight office, as well as other systemic changes at the VA. OSC also secured

relief for dozens of VA whistleblowers, helping courageous doctors, nurses, and other VA employees, while addressing ongoing threats to patient health and safety.

When I became Special Counsel, I realized that the Hatch Act, an important federal law that keeps partisan politics out of the public workplace and prevents those in political power from abusing their authority to advance partisan political causes, was also forcing my agency to unnecessarily interfere with state and local elections hundreds of times each year because the law prohibited employees from engaging in political activity if their positions were funded, in any part, with federal funds. In addition, there was no range of penalties; termination from employment was the only consequence for violating the Act. In response to my legislative proposal, Congress unanimously passed the Hatch Act Modernization Act of 2012. This law promoted good government, demonstrated respect for the independence of states and localities, and allowed OSC to better allocate its scarce resources toward more effective enforcement of the Hatch Act and other program areas.

Whistleblowers at the Air Force's Port Mortuary in Dover, Delaware disclosed misconduct regarding the improper handling of human remains of fallen service members, including lost and severed body parts. After I issued a report on this issue to the President and Congress, and testified at congressional hearings, the Air Force took important, wide-scale corrective action. The Air Force is now better able to uphold its sacred mission on behalf of fallen service members and their families.

I have never 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 2018 I have taught a seminar on Mediation at Georgetown University Law Center. This course covers mediation theory and practice and focuses on skill-building simulations and exercises. Representative syllabus supplied.

    From 2006 to 2011 I taught a seminar on Mediation at George Washington University School of Law. This course covered mediation theory and practice and focused on skill-building simulations and exercises. Representative syllabus supplied.

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

    I do not have any deferred income arrangements, stock, options, uncompleted contracts

or other future benefits of any type.

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 am currently an adjunct professor at Georgetown University Law School. I may continue to teach if I am confirmed as a judge and time allows.

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 anticipate any conflicts of interest when I become a judge on the Court of Federal Claims. If any conflicts were to arise on any case before me, I would recuse myself and have the matter assigned to a different judge. My husband's law firm, Zuckerman Spaeder LLP, does not regularly appear before the Court of Federal Claims, but I would recuse myself from any matter in which his law firm is counsel.

    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 consult applicable rules, canons and decisions addressing conflicts of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and any other materials addressing conflicts of interest and appearances of conflicts of interest. In any close cases, or if any issue arose in which there was a question, I would consult other judges and any individuals designated by the court or judicial organizations to provide advice on these types of questions as they arise.

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 served as the President, Vice-President and long-time board member of the Washington Council of Lawyers, a public interest bar association. Through the Council, I organized and participated in programs to increase pro bono participation and provide training opportunities to lawyers interested in pro bono, as well as for lawyers in legal services organizations. Since 2018 I have served on the D.C. Circuit's Pro Bono Committee, and from 2006-2011 I was an appointed member of the D.C. Bar's Pro Bono Committee. When I served on the Council for Court Excellence Board, I organized a half-day program on expanding the right to legal counsel in civil cases.

When I headed the Office of Special Counsel, to foster pro bono I instituted a policy providing up to 30 hours of administrative leave to any employee who wanted to participate in pro bono programs through the D.C. Bar or other legal services provider. I established a program where OSC employees staffed the D.C. Bar's Legal Advice and Referral Clinic once each quarter. I also appointed two employees to serve as the agency's Pro Bono Coordinators.

When I was in private practice, I regularly volunteered for the D.C. Bar's Advice and Referral Clinic. I took pro bono cases from the Washington Lawyers' Committee for Civil Rights and volunteered with the D.C. Employment Justice Center. I also volunteered as a mediator with the D.C. Human Rights Commission, the Equal Employment Opportunity Commission, and the Court of Appeals for the D.C. Circuit's Mediation Program.

Since 2017, I have tutored a student at J.O. Wilson Elementary School, 660 K Street, Northeast, Washington, District of Columbia 20002. Prior to the pandemic, I drove to the school approximately twice each month to tutor in reading and math.

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 11, 2021, the White House Counsel's Office requested I submit a cover letter and resume to be a judge on the United States Court of Federal Claims. On February 18, 2021, I interviewed with the White House Counsel's Office. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 13, 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).

   Jonathan Seth Kanter

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

   Assistant Attorney General, Antitrust Division, 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:
   The Kanter Law Group
   1717 K Street, NW
   Suite 900
   Washington, DC 20006

   Residence:
   Bethesda, Maryland

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

   July 30, 1973, New York, NY

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.

   Washington University School of Law (1995-1998)
   J.D., May 1998

   State University of New York at Albany (1991-1995)
   B.A., May 1995

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.

   The Kanter Law Group
   1717 K Street, NW
   Suite 900
   Washington, DC 20006
   Partner: September 2020-present

   Paul, Weiss, Rifkind, Wharton & Garrison LLP
   2001 K Street, NW
   Washington, DC 20006
   Partner: August 2016-September 2020

   Cadwalader, Wickersham & Taft LLP
   700 Sixth Street, NW
   Washington, DC 20001
   Partner: January 2007-August 2016
   Special Counsel: April 2007-December 2007

   Fried, Frank, Harris, Shriver & Jacobson LLP
   Now at: 801 17th Street, NW
   Washington, DC 20006
   Associate: November 2000-April 2007

   Federal Trade Commission
   600 Pennsylvania Avenue, NW
   Washington, DC 20580
   Attorney: October 1998-November 2000
   Summer Intern (Paid): June 1997-August 1997
   Summer Intern (Unpaid): June 1996-August 1996

   Bear Stearns & Co.
   Summer Legal Assistant: June 1995-July 1995

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 timely 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.

   Chambers and Partners: Individually ranked since 2010
   Global Competition Review: "45 under 45" (2017)
   Legal 500: Recognized in antitrust category (Dates unknown)
   Variety Impact Legal Report: Top Attorneys in the Entertainment Business (2019)
   Law 360: Top 5 Antitrust Lawyers Under the Age of 40 (2011)
   Washingtonian: Top Lawyers in Washington, DC (Dates unknown)
   Super Lawyers (2016 and other years unknown)
   Best Lawyers (2021 and other years unknown)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

   American Bar Association, Antitrust Section
   District of Columbia Bar Association
   New York Bar Association

10. **Bar and Court Admission**:

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

       New York, July 1999
       Washington, DC August 2001

    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.

       U.S. District Court for the District of Columbia
       2011-Present

       Southern District of New York
       2019-Present

       United States Court of Appeals for the Second Circuit
       2010-2015

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.

Mlex Advisory Board (2016-present)
Temple Sinai, Washington, DC (2008-2014)
Temple Beth Ami, Rockville, MD (2013-present)
River Falls Swim and Tennis, Potomac, MD (2013-present)
Mohican Pool, Bethesda, MD (2018-present)
Parent Service Association of Georgetown Day School, Washington, DC (2013-present)

In addition, I have made financial contributions to charitable organizations over the years. Such organizations may list me as a member by virtue of my financial contribution. I have not listed above any organization to which I gave funds and did not otherwise participate in programmatic activities.

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:

Co-author of chapter in "Chambers Legal Practice Guide: Merger Control" (unable to locate).

Takeaways from Senate Antitrust Enforcement Hearing, LAW360 (October 22, 2018). Copy supplied.

Big Data and Antitrust: A Regulatory Outlook, PAUL, WEISS, RIFKIND, WHARTON & GARRISON (November 16, 2017). Copy supplied.

Op-Ed, *Don't Hand Our TVs Over to Google*, NEW YORK TIMES (May 30, 2016). Copy supplied.

FTC Announces 2016 Thresholds for Merger Control Filings Under HSR Act and Interlocking Directorates Under the Clayton Act, CADWALADER WICKERSHAM & TAFT (January 26, 2016). Copy supplied.

Takeaways from the Ninth Circuit's Opinion Affirming the FTC's Victory Against the St. Luke's/Saltzer Merger, Cadwalader Wickersham & Taft (February 18, 2015). Copy supplied.

United States: FTC Announces 2015 Thresholds for Merger Control Filings Under HSR Act and Interlocking Directorates Under the Clayton Act, CADWALADER WICKERSHAM & TAFT (January 19, 2015). Copy supplied.

FTC Continues Antitrust Focus on Health Care Sector With Upcoming Two-Day Health Care Competition Workshop, CADWALADER WICKERSHAM & TAFT (February 22, 2014). Copy supplied.

United States: Takeaways from Government Victories in Recent Antitrust Merger Trials, CADWALADER WICKERSHAM & TAFT (February 4, 2014). Copy supplied.

What a Difference a Year Makes: An Emerging Consensus on the Treatment of Standard-Essential Patents, Competition Policy International (December 30, 2013). Copy supplied.

Settlement of the U.S. Airways/American Airlines Merger Litigation Highlights Changing Antitrust Landscape, CADWALADER WICKERSHAM & TAFT (November 20, 2013). Copy supplied.

FTC Expands Reporting Requirements for Transfers of Pharmaceutical Patent Rights, CADWALADER WICKERSHAM & TAFT (November 12, 2013). Copy supplied.

United States: Lessons Learned from Recent Penalties for Failures to File HSR Notification, CADWALADER WICKERSHAM & TAFT (July 23, 2013). Copy supplied.

United States: HSR Thresholds Increased for 2013, CADWALADER WICKERSHAM & TAFT (January 21, 2013). Copy supplied.

The Issue: Competition In Online Search: What Role For Antitrust, WASHINGTON LEGAL FOUNDATION (Winter 2012). Copy supplied.

United States: FTC/DOJ Announce Significant Changes to HSR Premerger Notification Form, CADWALADER WICKERSHAM & TAFT (September 18, 2011). Copy supplied.

Antitrust Merger Review in a Volatile Economy, LAW360 (February 20, 2009). 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 not located any responsive material.

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:

I testified before the Rhode Island House Committee on Innovation, Internet, & Technology regarding Rhode Island House Bill 6055 (March 2021). Notice of hearing available at https://status.rilegislature.gov/documents/agenda-17247.aspx. There is no video or audio available and I did not submit written testimony.

I testified before the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights as an expert in a hearing to examine the differences between the U.S. and European Union regarding the enforcement of antitrust and competition law. (December 19, 2018). Transcript supplied.

I testified before the Federal Trade Commission in connection with its Hearings on Competition and Consumer Protection in the 21st Century. I participated in the following panel: Nascent Competition: Are Current Levels of Enforcement Appropriate? (October 17, 2018). Transcript 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 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 outlines that I did not retain.. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

Confronting America's Monopoly Crisis: Taking on Tech's Titans & Reinvigorating Antitrust to Safeguard Democracy, AMERICAN ECONOMIC LIBERTIES PROJECT (October 21, 2020). https://youtu.be/I-3--JVFyWo

GCR Live: Telecoms, Media, Technology in London (March 2020). I participated in a panel discussion regarding competition law policy in connection with the digital sector. No notes or transcripts retained.

Panel on Changing Structures of the Media Market, CAPITOL FORUM (December 6, 2019). No notes or transcripts retained. Press coverage supplied.

Briefing on H.R. 20154, *Protecting Journalism in the Online Ecosystem*, NEWS MEDIA ALLIANCE (June 7, 2019). https://youtu.be/tHVZBluaWBQ

Understanding the Basic Economics of the Internet, GEORGETOWN CENTER FOR BUSINESS AND PUBLIC POLICY AT GEORGETOWN UNIVERSITY'S MCDONOUGH SCHOOL OF BUSINESS (May 17, 2018). https://youtu.be/RO8Yuz7SsN0

U.S. vs. Microsoft: 20 Years Later, Lessons Learned & the Path Forward, YELP (May 14, 2018). https://www.c-span.org/video/?445473-9/yelp-conference-antitrust-law-technology-panel-2

The New Gatekeepers: Journalism in the Era of Platform Monopolies, OPEN MARKETS INSTITUTE (June 14, 2018). https://youtu.be/40HXpi0IzDk

Making Partner in Big Law, DC BAR (February 7, 2018). Press release supplied.

Trump vs. Tech Giants: In the Media Market, What are the Implications of Potential Enforcement Against Facebook and Google?, THE CAPITOL FORUM (December 13, 2017). https://www.youtube.com/watch?v=Y0mWEEF0nbo

The Digital Duopoly: Deterring Competition, Professional Journalism and Political Discourse, STATE PRESS ASSOCIATION (December 4, 2017). Press release supplied.

The Future of Antitrust, THE FEDERALIST SOCIETY (November 17, 2017). https://youtu.be/DLqzv6-xX2Y

Unlocking the Promise of Antitrust Enforcement Conference, *Antitrust and Effective FRAND Commitments Panel*, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW (October 27, 2017). Press release supplied.

Challenging the Titans of Technology Panel, NEW CENTERS IDEAS SUMMIT (September 17, 2017). Press release supplied.

Extra! Extra! Do Newspapers Need an Antitrust Exemption?, AMERICAN BAR ASSOCIATION (August 29, 2017). Press release supplied.

Competition and Innovation in Online Markets, CONFERENCE OF WESTERN ATTORNEYS GENERAL (July 30, 2017). Press release supplied.

Washington Bytes, *The Future Of Antitrust Enforcement: Innovation, Wage Inequality and Democracy*, FORBES (June 2017). Copy supplied. https://www.forbes.com/sites/washingtonbytes/2017/06/15/the-future-of-antitrust-enforcement-innovation-wage-inequality-and-democracy/?sh=4066f3ac145d

Is There a Concentration Problem in America? Winner Take All Digital Platforms, THE UNIVERSITY OF CHICAGO, BOOTH SCHOOL OF BUSINESS, THE STIGLER CENTER, (March 27, 2017). No notes or transcripts retained. Event description and press coverage supplied.

Trump, Gorsuch, and the Concentration of Economic Power, CENTER FOR AMERICAN PROGRESS, (March 14, 2017). https://www.americanprogress.org/events/2017/03/07/427631/trump-gorsuch-concentration-economic-power/

Digital Platforms, Diversity of Voice, and Potential Enforcement, THE CAPITOL FORUM FUTURE OF BROADBAND AND TECH COMPETITION CONFERENCE, (December 16, 2016). Press release supplied.

Moderator, *Q&A with FCC Commissioner Jessica Rosenworcel* (October 24, 2017). Press release supplied.

Is Antitrust the Proper Remedy for Search Bias? CAPITOL FORUM (September 27, 2016). https://youtu.be/Abjx02koEfg

Dominant Platforms Under the Microscope: Policy Approaches in the U.S. and E.U., THE GEORGE WASHINGTON INSTITUTE OF PUBLIC POLICY (September 19, 2016). Press release supplied.

Jonathan Kanter Sits Down with the Capitol Forum, CAPITOL FORUM (May 10, 2016). No notes or transcript retained. Press release supplied. https://www.youtube.com/watch?v=5mPWVkKBlqM

Antitrust, Tech, and Book Publishing, DIGITAL BOOK WORLD CONFERENCE (March 7, 2016). Event description and press coverage supplied.

Amazon and The Law, NEW AMERICA (January 27, 2016). https://youtu.be/l5_DWJqGMr8

Antitrust, Privacy, and Big Data, CONCURRENCES (February 3, 2015). No notes or transcripts retained. Event report supplied.

Telecoms, Media, & Privacy, GCR LIVE (June 26, 2014). Event program supplied.

Patent Assertion, "Privateering," and Antitrust, WASHINGTON LEGAL FOUNDATION, (May 22, 2014). https://youtu.be/hRgbzTef01Y

Second Annual Law Leaders Forum 2013, GCR LIVE (March 15, 2013). Event coverage supplied.

Expert Panel Reacts to Google's Victory Over FTC, AMERICAN BAR ASSOCIATION SECTION OF ANTITRUST LAW (March 4, 2013). No notes or transcripts retained. Press coverage supplied.

Panel, ASSOCIATION FOR COMPETITIVE TECHNOLOGY (September 19, 2011). Press release supplied.

Searching for Unfairness? Debating What Antitrust Probes of Google Mean for Business and Consumers, THE WASHINGTON LEGAL FOUNDATION (September 19, 2011). No notes or transcripts retained. Press release supplied.

Capitol Hill Briefing, *Discussion on Google's Proposed Acquisition of AdMob* (April 15, 2010). No notes or transcripts retained. Press coverage supplied.

The Google/Yahoo! Agreement and its Implications for Future Antitrust Enforcement in Online Advertising, ABA BROWN BAG LUNCH (January 30, 2009). Event description supplied.

Panel discussion with senior government officials on the merger review process at the Department of Justice and the Federal Trade Commission, DC BAR PANEL (March 2002). Event description supplied.

American Economic Liberties Project: *Confronting America's Monopoly Crisis: Taking on Tech's Titans & Reinvigorating Antitrust to Safeguard Democracy* (October 2020) https://youtu.be/I-3--JVFyWo

GCR Live: *Telecoms, Media, Technology in London* (March 2020). I participated in a panel discussion regarding competition law policy in connection with the digital sector. No video available.

News Media Alliance (Briefing on Capitol Hill): *Protecting Journalism in the Online Ecosystem* (June 2019) https://youtu.be/tHVZBluaWBQ

Georgetown Center for Business and Public Policy at Georgetown University's McDonough School of Business: *Understanding the Basics of the Internet* (May 2018) https://youtu.be/RO8Yuz7SsN0

Yelp Conference on Antitrust Law and Technology (May 2018) https://www.c-span.org/video/?445473-9/yelp-conference-antitrust-law-technology-panel-2

Open Markets Institute: *The New Gatekeepers: Journalism in the Era of Platform Monopolies* (June 2018) https://youtu.be/40HXpi0IzDk

The Federalist Society: *The Future of Antitrust* (November 2017) https://youtu.be/DLqzv6-xX2Y

The University of Chicago, Booth School of Business, The Stigler Center; *Is There a Concentration Problem in America? Winner Take All Digital Platforms* (March 2017) https://www.chicagobooth.edu/research/stigler/events/march-27-2017-is-there-a-concentration-problem-in-america (No video available) (press coverage available at https://www.thenation.com/article/archive/this-budding-movement-wants-to-smash-monopolies/)

Capitol Forum: Search Bias Panel (September 2016) https://youtu.be/Abjx02koEfg

New America: *Amazon and The Law* (February 2016) https://youtu.be/l5_DWJqGMr8

Digital Book World Presentation (February 2016) https://whattheythink.com/news/76756-digital-book-world-conference-expo-speakers-focus-publishings-digital-transformation/; (no video available); description available at https://www.bookbusinessmag.com/post/publishers-can-fight-four-horsemen-amazon-apple-google-facebook/

Concurrences: *Antitrust, Privacy, and Big Data* (February 2015) https://www.concurrences.com/en/conferences/antitrust-privacy-big-data-82922

GCR Live TMT (June 2014) http://gcr.live/tmt2014

Washington Legal Foundation: *Patent Assertion, "Privateering," and Antitrust* (May 2014) https://youtu.be/hRgbzTef01Y

GCR Live: *Second Annual Law Leaders Forum 2013* (March 2013) Description available at https://globalcompetitionreview.com/gcr-live-second-annual-law-leaders-forum-2013

ABA Brown Bag Lunch: *The Google/Yahoo! Agreement and its Implications for Future Antitrust Enforcement in Online Advertising* (June 2009) Description available at http://allthingsd.com/20090130/miss-yahoogle-try-a-brown-bag-lunch-on-the-topic-today/

DC Bar Panel (March 2002) Description available at https://www.friedfrank.com/sitefiles/fffiles/alert_040502.pdf

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all interviews given, including through a review of 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:

Ryan Tracy and John McKinnon, *Google Foes Widen Claims*, WALL STREET JOURNAL (October 23, 2020). Copy supplied.

Blumenthal Asks FTC, DOJ to Probe Amazon Pricing, CONSUMER ELECTRONICS DAILY (December 20, 2018). Copy supplied.

Interview, REYNOLDS JOURNALISM INSTITUTE (October 31, 2018). https://youtu.be/Vj1T40JHDOc

Tony Romm, *Europe Hits Google with Record $5 Billion Antitrust Fine Over Bundling of Its Apps on Android*, WASHINGTON POST (July 18, 2018). Copy Supplied.

Adam Satariano and Jack Nicas, *E.U. Fines Google $5.1 Billion in Android Antitrust Case*, THE NEW YORK TIMES (July 18, 2018). Copy supplied.

Martin Giles, *28 Rein in the Data Barons*, TECHNOLOGY REVIEW (July 1, 2018). Copy supplied.

Ryan Grim and Lee Fang, *As John Conyers Departs from Judiciary Committee Spot, the First Battle of the Anti-Monopoly Era Begins*, THE INTERCEPT (November 28, 2017). Copy supplied.

The New Center, NO LABELS PODCAST (September 20, 2017). Press release supplied. Unable to locate.

Danny Vinik, *Inside the New Battle Against Google*, POLITICO (September 19, 2017). Copy supplied.

Jim Rutenberg, *News Outlets to Seek Bargaining Rights Against Google and Facebook*, THE NEW YORK TIMES (July 9, 2017). Copy supplied.

Natalie Sherman, *Are Google, Amazon, and Others Getting Too Big?*, BBC (June 9, 2017). Copy supplied.

David Dayen, *Be Careful Celebrating Google's New Ad Blocker. Here's What's Really Going On*, The Intercept (June 5, 2017). Copy supplied.

A Shift Toward Increased Antitrust Scrutiny of Tech Companies, PAUL, WEISS (October 20, 2016). https://www.law360.com/articles/853890

Diane Bartz, *U.S. House Votes to Approve Bill to Change How FTC Challenges Mergers*, REUTERS (March 23, 2016). Copy supplied.

Big Data and Antitrust: A Regulatory Outlook, DIGITAL BOOK WORLD/BEYOND THE BOOK PODCAST (March 13, 2016). Copy supplied.

Amazon Critics Renew Push for Federal Antitrust Enforcement Action Against Online Retailer, WASHINGTON INTERNET DAILY (January 28, 2016). Copy supplied.

Brent Kendall and Tripp Mickle, *FTC Turns Up Scrutiny on Reynolds-Lorillard Deal with Questions on Imperial*, DOW JONES NEWS (March 13, 2015). Copy supplied.

Rachel Ensign, *The Morning Risk Report: SNC-Lavalin Wants U.S.-Style Bribery Outcome*, DOW JONES NEWS (February 23, 2015). Copy supplied.

Q&A: Cadwalader's Jonathan Kanter, GLOBAL COMPETITION REVIEW (November 2014). Copy supplied.

Michele Lerner, *Smooth Moves, With Experts' Help*, THE WASHINGTON POST (May 9, 2014). Copy supplied.

Chris Kenneally, *The Good, The Bad & The Monopoly: Q&A with Jonathan Kanter,* DIGITAL BOOK WORLD (March 14, 2016). Copy supplied.

Brent Kendall, *Will Antitrust Unravel the Jos. A. Bank/Men's Wearhouse Tie-Up?*, WALL STREET JOURNAL BLOG (March 11, 2014). Copy supplied.

Vipal Monga, *DJ Firms Gird for Merger Trouble*, WALL STREET JOURNAL BLOG (September 24, 2013). Copy supplied.

Apple Fights U.S. E-Books Pricing Claims in Antitrust Trial, POSTMEDIA (June 3, 2013). Copy supplied.

Lawyers Defending Google Say Favoring Own Content Over Rivals' in Search Wouldn't Violate Antitrust Rules, WASHINGTON INTERNET DAILY (October 7, 2011). Copy supplied.

Dan Levine, *Google Wins Antitrust Victory in Ohio Case*, REUTERS (September 1, 2011). Copy supplied.

Brian Baxter, *Google Readies Antitrust Team to Meet Possible FTC Probe*, THE AMERICAN LAWYER (June 28, 2011). Copy supplied.

Ian Thoms, *Rising Star: Cadwalader's Jonathan Kanter*, LAW360 (March 11, 2011). Copy supplied.

Seth Hettena, *The Google-Slayers*, THE AMERICAN LAWYER (May 1, 2010). Copy supplied.

Antitrust Review of Google AdMob Deal Debated, WASHINGTON INTERNET DAILY (April 16, 2010). Copy supplied.

John Letzing, *Yahoo Investors Unimpressed with Microsoft Deal*, MARKETWATCH (August 28, 2009). Copy supplied.

Miguel Helft, *Lawsuit Says Google was Unfair to Rival Site*, THE NEW YORK TIMES (February 18, 2009). Copy supplied.

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.

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 worked for a political campaign or election committee.

14. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not clerked for a judge, but I completed a judicial externship during my third year of law school for Judge Mary Ann Medler of the United States District Court for the Eastern District of Missouri.

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.

The Kanter Law Group
1717 K Street, NW
Suite 900
Washington, DC 20006
Partner: September 2020-present

Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, NW
Washington, DC 20006
Partner: August 2016-September 2020

Cadwalader, Wickersham & Taft LLP
700 Sixth Street, NW
Washington, DC 20001
Partner: January 2007-August 2016
Special Counsel: April 2007-December 2007
Fried, Frank, Harris, Shriver & Jacobson LLP
Now at: 801 17th Street, NW
Washington, DC 20006
Associate: November 2000-April 2007

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Attorney: October 1998-November 2000

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.

I am an antitrust attorney and I have been practicing antitrust law continuously since my admission to the bar.

Following my graduation from law school, I worked as an antitrust attorney at the Federal Trade Commission, Bureau of Competition. My primary responsibilities related to investigations of mergers and acquisitions.

From Fall 2000 until September 2020, I worked in private practice as an antitrust attorney. Until approximately 2007, the primary focus of my practice was to represent clients in investigations and related litigation by the Federal Trade Commission, Department of Justice, Antitrust Division, and state attorneys general. I provided antitrust counseling as well.

Starting in 2007 and until September 2020, the balance of my practice shifted, and a substantial portion of my work involved the representation of clients as non-parties to investigations by the Federal Trade Commission, Department of Justice, Antitrust Division, and state attorneys general. Many of my clients were industry participants advocating in favor of vigorous enforcement. During this period, I also represented clients as parties to investigations involving mergers and anticompetitive conduct. I have also represented clients seeking amnesty in criminal antitrust investigations. I also provided antitrust counseling during this period. Occasionally, I advised on non-antitrust matters involving privacy and consumer protection.

In September 2020, I founded my current law firm, which is an antitrust boutique focused on advocacy in favor of antitrust enforcement. My current firm does not represent targets of government antitrust investigations or defendants in antitrust matters. Our firm focuses on matters involving media and technology, although the firm handles matters in other industries as well. Our clients include both companies and foundations.

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

At the Federal Trade Commission, my client was the United States. Following my graduation from law school, I worked as an antitrust attorney at the Federal Trade Commission, Bureau of Competition. My primary responsibilities related to antitrust investigations of mergers and acquisitions.

From Fall 2000 until September 2020, I worked in private practice as an antitrust attorney. As noted above, until approximately 2007, the primary focus of my practice was to represent clients in investigations and related litigation by the Federal Trade Commission, Department of Justice, Antitrust Division, and state attorneys general. I provided antitrust counseling as well.

Starting in 2007 and until September 2020, the balance of my practice shifted, and a substantial portion of my work involved the representation of corporate clients as non-parties to investigations by the Federal Trade Commission, Department of Justice, Antitrust Division, and state attorneys general. Occasionally, I advised clients in non-antitrust matters involving privacy and consumer protection.

In September 2020, I founded my current law firm, which is an antitrust boutique focused on advocacy in favor of antitrust enforcement. Our clients include both companies and foundations.

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.

The primary focus of my practice relates to antitrust legal analysis and advocacy before antitrust enforcement authorities, including the Department of Justice, Federal Trade Commission, and state attorneys general. From time to time, these matters result in litigation. Additionally, I also have represented third-party witnesses to antitrust litigation matters, often in support of government enforcement authorities or private plaintiffs.

i. Indicate the percentage of your practice in:
   1. federal courts: 10%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 90%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Although I have been involved in many litigation matters throughout my career, I have not tried cases to a verdict. I have, however, been the lead attorney in scores of investigations by the federal and state antitrust authorities.

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not argued before the Supreme Court.

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally

handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. FTC v. BP Amoco et al.,
   No. 00-00416 SI
   The Honorable Susan Illston
   Northern District of California
   1999-2000

   The FTC filed a lawsuit to block BP Amoco's proposed acquisition of ARCO. I was a member of the FTC's litigation team. I worked on various aspects of the investigation and litigation. Among other things, I was responsible for conducting depositions of nonparty witnesses and deposing BP's efficiency expert. The matter settled shortly before trial.

   Co-Counsel: There was an extensive FTC Complaint Counsel. My primary supervisors are retired: Joseph Brownman, Phill Broyles, and Richard Libeskind. The lead trial lawyer was then the Director of the Bureau of competition and he is now available at:

   Richard Parker
   (Formerly at FTC)
   Now at: Gibson, Dunn & Crutcher LLP
   202-955-8503

   Opposing Counsel
   Margaret Pfeifer
   Sullivan & Cromwell LLP
   202-956-7540

2. U.S. v. 3D Systems Corporation
   Civil No: 1:01CV01237
   The Honorable Gladys Kessler
   U.S. District Court for the District of Columbia
   2002

The Department of Justice filed in federal court to block the proposed acquisition of DTM Corp. by 3D System Corp. I was the primary associate for the team representing DTM and worked on every aspect of the matter for DTM. The parties settled the matter before trial.

Co-Counsel
Charles F. (Rick) Rule
(Formerly at Fried, Frank LLP)
Now at: Paul, Weiss LLP
202-223-7320

Opposing Counsel
Dando Cellini (Deceased)
(Formerly at U.S. Department of Justice)

3. U.S. v. Microsoft Corporation
Civil Action No. 98-1232
The Honorable Coleen Kollar-Kotelly
U.S. District Court for the District of Columbia
2002-2011

I was one of Microsoft's lead outside counsel regarding its compliance with the Final Judgment. Over a period of roughly 10 years, I worked many aspects of the complex antitrust settlement. Among other things I appeared in court on a regular basis and authored many submissions to the court.

Co-Counsel
Charles F. (Rick) Rule
(Formerly at Fried Frank LLP)
Now at: Paul, Weiss LLP
202-223-7320

Opposing Counsel
Aaron Hoag
U.S. Department of Justice
202-307-6153

4. New York v. Microsoft Corp.,
   Civil Action No. 98-1233
   The Honorable Coleen Kollar-Kotelly
   U.S. District Court for the District of Columbia
   2002-2011

   I was a primary member of the team that litigated issues relating to compliance and that were distinct from issues raised by the Department of Justice. Over a period of roughly 10 years, I worked many aspects of the complex antitrust settlement. Among other things I appeared in court on a regular basis and authored many submissions to the court.

   Co-Counsel
   Charles F. (Rick) Rule
   (Formerly at Fried Frank LLP)
   Now at: Paul, Weiss LLP
   202-223-7320

   Opposing Counsel
   Jay Himes (Formerly of New York Attorney General's Office)
   646-808-6135

5. TradeComet.com LLC v. Google, Inc.,
   693 F. Supp. 2d 370
   The Honorable Sidney Stein
   Southern District of New York
   2009-2010

   I was a member of the team that filed the complaint against Google in this antitrust matter. I worked on substantive legal aspects of this matter. I did not appear in court.

   Co-Counsel
   Charles F. (Rick) Rule
   (Formerly at: Cadwalader LLP)
   Now at: Paul, Weiss LLP
   202-223-7320

   Opposing Counsel
   Jonathan Jacobson
   Wilson Sonsini Goodrich & Rosati
   212-497-7758

6. Google, Inc., Plaintiff, v. MyTriggers.Com, Inc., et al., Defendants.,
   09CV-14836
   The Honorable Judge John Bessey
   Franklin County Court of Common Pleas
   2010-2011

   I was a member of the team that filed the complaint against Google in this antitrust matter. I worked on substantive legal aspects of this matter. I did not appear in court.

   Co-Counsel
   Charles F. (Rick) Rule
   (Formerly at: Cadwalader LLP)
   Now at: Paul, Weiss LLP
   202-223-7320

   Opposing Counsel
   Jonathan Jacobson
   Wilson Sonsini Goodrich & Rosati
   212-497-7758

7. *In the Matter of 1-800 Contacts, Inc.,*
   FTC Docket No. 9372, FTC File No. 141 0200
   The Honorable D. Michael Chappell, Administrative Law Judge
   U.S. Federal Trade Commission
   2016-2017

   I was lead counsel to a non-party witness in this matter. I worked on various aspects of discovery and prepared sworn statements for both the plaintiffs and the defendants on behalf of my client's witness. The litigation involved allegations by the FTC regarding agreements between competitors to limit keyword search advertising.

   Co-Counsel
   Mark Meador
   (Formerly Paul, Weiss LLP)
   Now at: Counsel to Senator Mike Lee, House Judiciary Committee
   202-225-3951

   Opposing Counsel (Plaintiffs)
   Joshua Gray
   (Formerly at FTC)
   Now at: Kenny Nachwalter
   305-373-1000

Opposing Counsel (Defendants)
Justin Raphael
Munger, Tolles & Olson LLP
415-512-4085

8. U.S. v Anthem
   236 F. Supp. 3d 171 (D.D.C. 2017)
   The Honorable Amy Berman Jackson
   U.S. District Court for the District of Columbia
   2016-2017

   DOJ challenged Anthem's attempt to acquire Cigna. I was a member of the litigation team for Cigna. I defended depositions and prepared witnesses for trial.

   Co-Counsel
   Charles F. (Rick) Rule
   Paul, Weiss LLP
   202-223-7320

   Opposing Counsel
   Ryan Kantor
   (Formerly at U.S. Department of Justice)
   Now at: Morgan, Lewis, & Bockius LLP
   202-739-5343

9. New York v. Deutsche Telekom AG,
   439 F. Supp. 3d 179
   The Honorable Victor Marerro
   (S.D.N.Y. 2020)

   The case involved an attempt by numerous state attorneys general to block the proposed acquisition of Sprint by T-Mobile. I was lead counsel to a significant non-party testifying witness. Among other things, I defended the witness deposition and prepared the witness for trial.

   Co-Counsel
   Brandon Kressin
   (Formerly at Paul, Weiss LLP)
   Now at: Kanter Law Group LLP
   202-455-4244

   Opposing Counsel (Plaintiffs)
   Glenn Pomerantz
   Munger, Tolles, & Olson LLP
   213-683-9132

Opposing Counsel (Defendants)
David Gelfand
Cleary, Gottleib, Steen & Hamilton LLP
202-974-1690

10. Epic Games v. Apple Inc.,
Case No. 4:20-cv-05640-
The Honorable Yvonne Gonzalez Rodriguez
Northern District of California
2019-2021

The case is pending and includes allegations that Apple has monopolized markets relating to mobile app distribution. I was lead counsel to multiple non-party testifying witnesses in response to compulsory subpoenas. Among other things, I defended witness depositions and prepared witnesses for trial testimony.

Co-Counsel
Shyla Alonso
Perkins Coie LLP
206-359-3980

Opposing Counsel (Plaintiffs)
Hon. Katherine B. Forrest
Cravath, Swaine & Moore LLP
212-474-1151

Opposing Counsel (Defendants)
Michelle Lowery
McDermott, Will & Emory LLP
310-551-9309

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.)

I have represented clients in major antitrust investigations and litigation matters for over 20 years.

I have advised and represented numerous clients with concerns about the practices of companies with monopoly power. This includes investigations of both mergers and allegations of anticompetitive practices. I have advocated on behalf of these clients before federal and state antitrust authorities.

On behalf of my clients, I have worked to promote enforcement against large companies in a variety of industries. The vast majority of my representations are not public; however, the most notable industry is big tech, where for over a decade I have advocated in favor of vigorous enforcement. Other industries include, without limitation, healthcare, pharmaceuticals, and telecom. By way of example, I have worked on behalf of clients to oppose mergers, acquisitions, and joint ventures, including: Google's acquisition of DoubleClick, Advocate Healthcare's proposed acquisition of NorthShore University HealthSystem, and T-Mobile's acquisition of Sprint.

I have counseled clients and provided risk assessments in connection with mergers, acquisitions, joint ventures, and other business arrangements in a wide variety of industries over the course of my career, including technology, transportation, healthcare, media, retail, and others.

I have also represented companies and individuals in criminal antitrust investigations. This includes clients seeking immunity under the Department of Justice's amnesty program.

17. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    I have not taught any courses on a full-time basis. From time to time, I have been asked to serve as a guest lecturer at educational institutions on various topics. I have described those lectures in response to Question 12(d) above.

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.

    I currently have an HR-10 Account at Paul, Weiss. Please see my SF-278 as provided by the Office of Government Ethics for details.

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 OGE-278 as provided by the Office of Government Ethics.

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

    See attached Net Worth Statement.

22. **Potential Conflicts of Interest**:

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

       If confirmed, I will consult with the Department of Justice's ethics office and will recuse myself from any matter in which recusal is required.

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

       If I am confirmed, any potential conflict of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official. If confirmed, I will continue to consult with the Department of Justice's ethics office and will recuse myself from any matter in which recusal is required.

23. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional work load, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Throughout my career I have been committed to performing *pro bono* legal service. I have represented clients in landlord-tenant disputes and a variety of other matters. Notably, in 2020, I led a team to develop resources for individuals and small businesses seeking support from local and federal governments in connection with the COVID 19 crisis. I have also provided extensive pro-bono services to public interest organizations advocating for antitrust enforcement.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Lucy Koh
Nominee to be United States Circuit Judge for the Ninth Circuit
October 13, 2021

1. **In your nearly 14 years of experience on the bench, you have issued more than 3,250 written opinions and presided over 271 total trials.**

   How do you think this trial court experience has helped prepare you for the work you'll encounter on the Ninth Circuit?

   Response: For nearly 11.5 years on the federal bench, I have presided over an average of 719 cases per year. In 2017, I presided over 941 cases. As a United States District Judge, I have issued over 3,250 written decisions and have been reversed only 42 times. Twenty percent of these reversals were in my two *Apple v. Samsung* cases, which raised complex issues of first impression. For 2.5 years as a California Superior Court Judge, I presided over 500 cases a week. As a state trial judge, I only had one partial reversal. In total, I have presided over 271 trials.

   From presiding over civil and criminal cases in the federal and state trial courts, I have seen a broad range of subject matters, types of cases, and procedural postures. I greatly appreciate clear guidance from the appellate courts. When I sat by designation on the Ninth Circuit, it gave me a new perspective on how I should make a record and what I should include in my orders. It gave me new eyes with which to see how I should do my job as a federal trial judge better. If confirmed, I hope the volume, breadth, and diversity of my federal and state trial court experience will equally benefit my work as an appellate judge.

2. **At your hearing, Senators Cotton and Tillis both asked you about your decision in *FTC v. Qualcomm.***

   Please expand on your answers to Senators Cotton and Tillis, including, but not limited to, the reasoning behind your decision.

   Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020), the Ninth Circuit reversed my order holding that Qualcomm's licensing practices violated the Sherman Act and the Federal Trade Commission Act ("FTC Act"). I will faithfully follow the Ninth Circuit precedent in any future cases.

   My order has been reversed and has no legal effect. I provide an explanation for my ruling solely to respond to your question. The bench trial for this case consisted of 10 days of evidence and 1 day of argument. *Fed. Trade Comm'n v. Qualcomm Inc.*, 411 F. Supp. 3d 658, 669 (N.D. Cal. 2019). During the trial, 50 witnesses testified, and the parties submitted 276 exhibits. The parties filed 221 pages of proposed findings of fact and conclusions of law. After reviewing the trial record and considering the parties' arguments, I issued a 233-page order with extensive factual and credibility findings and legal analysis.

My order analyzed three causes of action: (1) restraint of trade under Sherman Act § 1; (2) monopolization under Sherman Act § 2; and (3) unfair methods of competition under the FTC Act, which overlaps with the Sherman Act. "Section 1 of the Sherman Act, 15 U.S.C. § 1, prohibits [e]very contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States." *Allied Orthopedic Appliances, Inc. v. Tyco Health Care Grp. LP*, 592 F.3d 991, 996 (9th Cir. 2010). "To establish liability under § 1, a plaintiff must prove (1) the existence of an agreement, and (2) that the agreement was an unreasonable restraint of trade." *Aerotec Int'l, Inc. v. Honeywell Int'l, Inc.*, 836 F.3d 1171, 1178 (9th Cir. 2016). "Section 2 of the Sherman Act makes it unlawful for a firm to 'monopolize.'" *United States v. Microsoft Corp.*, 253 F.3d 34, 50 (D.C. Cir. 2001). "The offense of monopolization has two elements: '(1) the possession of monopoly power in the relevant market'"; and (2) "the willful acquisition or maintenance of that power" through exclusionary conduct "as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.'" *Id.* (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966)).

The FTC identified three specific practices as anticompetitive. First, the FTC challenged Qualcomm's practice of refusing to sell code division multiple access ("CDMA") modem chips and premium Long Term Evolution ("LTE") modem chips to an original equipment manufacturer ("OEM") unless "the OEM sign[ed] a separate patent license agreement." *Qualcomm*, 411 F. Supp. 3d at 697. Second, the FTC challenged Qualcomm's practice of refusing to provide licenses for standard essential patents ("SEPs") to rival chip manufacturers. *Id.* at 758. Third, the FTC challenged Qualcomm's de facto exclusive dealing contracts with Apple. *Id.* at 763.

After considering all the evidence and the parties' arguments, I found that "Qualcomm's licensing practices have strangled competition in the CDMA and premium LTE modem chip markets for years, and harmed rivals, OEMs, and end consumers in the process." *Id.* at 812. I also found that "Qualcomm's conduct 'unfairly tends to destroy competition itself.'" *Id.* (quoting *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993)). Applying the above-described legal standards to these factual findings, I "conclude[d] that Qualcomm's licensing practices [we]re an unreasonable restraint of trade under § 1 of the Sherman Act and exclusionary conduct under § 2 of the Sherman Act." *Id.* (citing *Microsoft*, 253 F.3d at 58-59). Thus, I held that "Qualcomm's practices violate[d] § 1 and § 2 of the Sherman Act" and that Qualcomm was "liable under the FTC Act, as 'unfair methods of competition' under the FTC Act include 'violations of the Sherman Act.'" *Id.* (quoting *Fed. Trade Comm'n v. Cement Inst.*, 333 U.S. 683, 693-94 (1948)).

On appeal, the Ninth Circuit reviewed a different set of arguments and evidence than I did. First, the FTC changed its theory regarding Qualcomm's refusal to license SEPs to rival chip manufacturers. Second, the Department of Justice submitted merits arguments in support of Qualcomm for the first time on appeal and introduced new evidence on appeal. Third, retired Federal Circuit Judge Paul R. Michel submitted for the first time on appeal an argument

about a method for calculating patent royalties and an argument that antitrust law should not be used to resolve disputes involving patent license agreements. Fourth, former FTC Commissioner Joshua Wright submitted for the first time on appeal an argument that the antitrust laws should not be used to resolve contract disputes between private parties. The Ninth Circuit noted all these developments and specifically relied on Judge Michel's and Mr. Wright's briefs for its conclusion regarding Qualcomm's refusal to license SEPs to rival chip manufacturers. *Qualcomm*, 969 F.3d at 997.

The Ninth Circuit held the following, which is the law that I will apply in future cases before me:

The Ninth Circuit held that the FTC failed to show that Qualcomm's practices violated Section 2 of the Sherman Act. First, the Ninth Circuit held that "Qualcomm's practice of licensing its SEPs exclusively at the OEM level does not amount to anticompetitive conduct in violation of § 2, as Qualcomm is under no antitrust duty to license rival chip suppliers." *Id.* at 1005. Although the Ninth Circuit declined to address whether "Qualcomm has breached any of its [fair, reasonable, and non-discriminatory] commitments," the Ninth Circuit stated that "the remedy for such a breach lies in contract and patent law." *Id.* Second, the Ninth Circuit held that "Qualcomm's patent-licensing royalties and 'no license, no chips' policy do not impose an anticompetitive surcharge on rivals' modem chip sales." *Id.* According to the Ninth Circuit, "these aspects of Qualcomm's business model are 'chip-supplier' neutral and do not undermine competition in the relevant antitrust markets." *Id.* Third, the Ninth Circuit held that "Qualcomm's 2011 and 2013 agreements with Apple ha[d] not had the actual or practical effect of substantially foreclosing competition in the CDMA modem chip market." *Id.* "Furthermore, because these agreements were terminated years ago by Apple itself, there [was] nothing to be enjoined." *Id.*

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Lucy H. Koh
Judicial Nominee to the United States Circuit Court of Appeals for the Ninth Circuit

1. **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 United States Supreme Court nor the Ninth Circuit has used or defined the term "super precedent." As a lawyer and a judge, I have not used this term. If confirmed, I will faithfully follow all United States Supreme Court and Ninth Circuit precedent.

2. **You can answer the following questions yes or no:**
   a. **Was *Brown v. Board of Education* correctly decided?**
   b. **Was *Loving v. Virginia* correctly decided?**
   c. **Was *Griswold v. Connecticut* correctly decided?**
   d. **Was *Roe v. Wade* correctly decided?**
   e. **Was *Planned Parenthood v. Casey* correctly decided?**
   f. **Was *Gonzales v. Carhart* correctly decided?**
   g. **Was *District of Columbia v. Heller* correctly decided?**
   h. **Was *McDonald v. City of Chicago* correctly decided?**
   i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
   j. **Was *Sturgeon v. Frost* correctly decided?**
   k. **Was *Rust v. Sullivan* correctly decided?**
   l. **Was *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* correctly decided?**

   Response: I follow all United States Supreme Court precedents. As a judge, it is improper for me to comment on any issues that may come before me, so as a general matter, I do not comment on the correctness of United States Supreme Court precedents. However, it is unlikely that *de jure* racial segregation in schools or miscegenation laws would be reimposed in the United States, so like prior judicial nominees, I can state that I believe *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided.

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 am not familiar with Judge Jackson's statement. The Constitution is an enduring document that sets forth the principles that govern our nation. The Constitution does not change unless amended pursuant to Article V.

4. **Should paying clients be able to influence which pro bono clients engage a law firm?**

   Response: Decisions about what clients a law firm engages and under what conditions are decisions for the law firm to make consistent with the law firm's ethical obligations.

5. **Do you agree with the propositions that some clients don't deserve representation on account of their:**

   a. **Heinous crimes?**
   b. **Political beliefs?**
   c. **Religious beliefs?**

   Response: The Sixth Amendment states that in all criminal prosecutions the accused shall have "the assistance of counsel for his defence." U.S. Const. Amend. VI. In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the United States Supreme Court held that the Sixth and Fourteenth Amendments guarantee a right to counsel for indigent defendants, accused of a crime, in federal and state courts, which would include crimes considered to be heinous. There is no similar right to counsel in civil matters. Lawyers should make decisions about whom they choose to represent consistent with their ethical obligations.

6. **Should judicial decisions take into consideration principles of social "equity"?**

   Response: Judicial decisions should take into consideration the record before the court and decide the limited issues before the court by applying precedent.

7. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

   Response: Courts should interpret constitutional provisions by using interpretative methodologies as instructed by the United States Supreme Court and by faithfully following United States Supreme Court and Ninth Circuit precedent.

8. **Is climate change real?**

   Response: Climate change is an important issue for the executive and legislative branches of government to consider. As a judge, I decide the limited issues before me in individual cases by carefully reviewing the record and applying United States Supreme Court and Ninth Circuit precedent.

9. Does 8 C.F.R. § 1003.14(a), the regulation concerning an immigration court's jurisdiction, set out a limit on the immigration court's subject matter jurisdiction, a claim-processing rule, or something else?

Response: In *Karingithi v. Whitaker*, 913 F.3d 1158, 1159-60 (9th Cir. 2019), the Ninth Circuit stated that the Attorney General has promulgated regulations governing removal proceedings, including when jurisdiction vests with the Immigration Judge. Specifically, 8 C.F.R. § 1003.14(a) states: "Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service." 8 C.F.R. § 1003.14(a) further states that a charging document "must include a certificate showing service on the opposing party pursuant to § 1003.32 which indicates the Immigration Court in which the charging document is filed." In *Karingithi*, the Ninth Circuit stated that 8 U.S.C. § 1003.15(b) identifies the information that must be included in a notice to appear and does not require that the time and date of the proceedings appear in the initial notice to appear. 913 F.3d at 1160. Instead, 8 C.F.R. § 1003.18(b) compels the inclusion of the time and date of the proceedings "where practicable." *Id.* When that information is not contained in the initial notice to appear, the regulation requires the Immigration Judge to schedule the initial removal hearing and provide notice to the government and the alien of the time, place, and date of the proceeding. *Id.* In *Karingithi*, the Ninth Circuit held that these regulations define when jurisdiction vests. *Id.* Thus, jurisdiction has vested in the Immigration Judge even if the notice to appear does not include the time and date of the proceeding. *Id.* In *United States v. Bastide-Hernandez*, 3 F.4th 1193, 1196 (9th Cir. 2021), the Ninth Circuit clarified that when a notice to appear is filed, jurisdiction exists and vests with the Immigration Court.

10. Do administrative agencies have subject matter jurisdiction, or is that concept specific to Article III courts?

Response: The jurisdiction of an administrative agency is derived from the agency's enabling statute. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000) (The "agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress."). An Article III court's subject matter jurisdiction "defines its power to hear cases," *Lightfoot v. Cendant Mortg. Corp.* 137 S. Ct. 553, 560 (2017), and is grounded in the court's "statutory or constitutional power to adjudicate the case," *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1998).

11. As the Ninth Circuit has explained, "*In personam* jurisdiction, simply stated, is the power of a court to enter judgment against a person. *In rem* jurisdiction is the court's power over property." Does a court need to identify a statute that grants it personal jurisdiction over a defendant?

Response: Where subject matter jurisdiction is based on diversity of citizenship, a federal district court has no inherent authority to exercise personal jurisdiction. Instead, the

district court has personal jurisdiction only if a federal statute authorizes personal jurisdiction or if a "court of general jurisdiction in the state where the district court is located" would have personal jurisdiction. *See* Fed. R. Civ. P. 4(k)(1). In the latter scenario, the court must refer to the state's long-arm statute.

The same principles apply in most cases where subject matter jurisdiction is based on a "claim that arises under federal law." However, if a claim arises under federal law and the "defendant is not subject to jurisdiction in any state courts," a federal district court has the inherent authority to exercise personal jurisdiction "consistent with the United States Constitution and laws." *See* Fed. R. Civ. P. 4(k)(2).

12. Do parents have a constitutional right to direct the education of their children?

Response: The United States Supreme Court has held that parents have the right to direct their children's education. *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) ("[Plaintiff's] right thus to teach, and the right of parents to engage [Plaintiff] so to instruct their children, we think, are within the liberty" of the Fourteenth Amendment.); *accord Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

13. Is whether a specific substance causes cancer in humans a scientific question?

Response: The Ninth Circuit has held that scientific evidence is relevant to determining whether a specific substance caused a human's cancer. *See Messick v. Novartis Pharms. Corp.*, 747 F.3d 1193, 1197 (9th Cir. 2014) (holding that it was an abuse of discretion for district court to exclude a doctor's testimony that a particular substance was a substantial factor in the development of woman's cancer).

14. Is when a "fetus is viable" a scientific question?

Response: In *Planned Parenthood v. Casey*, 505 U.S. 833, 860 (1992), the United States Supreme Court noted that "advances in neonatal care have advanced viability to a point somewhat earlier" than in 1973. The Court further noted that viability occurred at approximately 28 weeks at the time of *Roe*, occurred at approximately 23 to 24 weeks at the time of *Casey*, and may occur "at some moment even slightly earlier in pregnancy, as it may if fetal respiratory capacity can somehow be enhanced in the future." *Id.*

15. Is when a human life begins a scientific question?

Response: In *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992), the United States Supreme Court stated: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."

16. Can someone change his or her biological sex?

Response: To my knowledge, there are medical procedures to change one's biological sex.

17. Is threatening Supreme Court Justices right or wrong?

Response: 18 U.S.C. § 111(a)(2) makes it a crime for someone to "forcibly assault[], resist[], oppose[], impede[], intimidate[], or interfere[] with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties." 18 U.S.C. § 1114 designates "any officer or employee of the United States or of any agency in any branch of the United States Government." In *United States v. Harrelson*, 754 F.2d 1153, 1158 (5th Cir. 1985), the court noted that criminal defendants were charged with murdering a federal judge in violation of 18 U.S.C. §§ 1111 and 1114.

18. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

Response: If a case came before me that required me to address this issue, I would carefully research the law and impartially apply the law to the facts in the record.

19. Do you think the Supreme Court should be expanded?

Response: As a United States District Judge, I am bound by the United States Supreme Court's precedent regardless of that Court's size or composition, and it would be inappropriate for me to comment on whether the size of that Court should be changed.

20. Does the president have the power to remove senior officials at his pleasure?

Response: The President's authority to remove officials who wield executive power is generally unrestricted. *See Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2191-92 (2020). The United States Supreme Court has recognized only two exceptions to this rule: (1) Congress can include good cause removal protection when creating "expert agencies led by a *group* of principal officers"; or (2) Congress can create tenure protection for "*inferior* officers with narrowly defined duties." *Id.* at 2192.

To determine whether the president has the power to remove a senior official at his pleasure, I would consider any statutory provisions governing removal of the position at issue, and the standards set forth by the United States Supreme Court. *See, e.g., id.* (holding Congress cannot limit the President's removal power in the context of "an independent agency led by a single director"); *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010) (holding Congress could not create two levels of for cause removal protection); *Morrison v. Olson*, 487 U.S. 654 (1988) (upholding removal protection for an inferior officer).

21. Is it possible that removing someone—as is the President's power—can be for wholly apolitical reasons?

Response: I believe it is factually possible.

22. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

Response: The question of who should respond to domestic violence calls should be addressed by the executive and legislative branches of government. If a case came before me that required me to answer this question, I would faithfully apply United States Supreme Court and Ninth Circuit precedent to the record.

23. 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: Discretionary law enforcement decisions are not for the judicial branch of government to make. As a judge, the issue of whether the government's use of law enforcement resources is appropriate has not been presented to me. As a judge, I am only called upon to determine whether law enforcement has complied with the law. Nonetheless, if a case came before me that required me to answer this question, I would faithfully apply United States Supreme Court and Ninth Circuit precedent to the record.

24. Do you believe that we should defund or decrease funding for police departments and law enforcement, including the law enforcement entities responsible for protecting the federal courthouses in Portland from violent rioters? Please explain.

Response: Questions regarding funding for police departments and law enforcement are for the executive and legislative branches of government and not the judicial branch.

25. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: Questions regarding funding for police departments and social services are for the executive and legislative branches of government and not the judicial branch.

26. Do you believe legal gun purchases have caused the violent crime spike?

Response: Questions regarding whether legal gun purchases have caused a spike in violent crime are for the executive and legislative branches of government and not the judicial branch.

27. Do rogue gun dealers constitute a substantial factor in the amount of crimes committed with firearms?

Response: Questions regarding whether rogue gun dealers constitute a substantial factor in the commission of firearm crimes are for the executive and legislative branches of government and not the judicial branch.

28. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun re-offenders to the community?

Response: To determine whether a defendant is entitled to compassionate release, courts determine whether a defendant has satisfied three requirements: (1) has a defendant exhausted his administrative remedies; (2) are the 18 U.S.C. § 3553(a) factors consistent with granting a motion for compassionate release; and (3) do extraordinary and compelling reasons as defined by the United States Sentencing Commission's policy statement warrant compassionate release. The 18 U.S.C. § 3553(a) factors are: the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offense.

29. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

Response: In *District of Columbia v. Heller*, the United States Supreme Court declined to adopt a single standard of review. 554 U.S. 570, 634-35 (2008). The ban on handguns in the home in *Heller* failed any standard of scrutiny applied to enumerated constitutional rights. *Id.* at 628-29. More generally, the United States Supreme Court in *Heller* held that a ban on firearms in the home violates the Second Amendment. *Id.* The United States Supreme Court emphasized, that "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and provided three examples of presumptively valid regulations of firearms: (1) prohibitions on possession by "felons or the mentally ill"; (2) "laws forbidding the carrying of firearms in sensitive places such as schools or government buildings"; and (3) "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27. The United States Supreme Court noted that these were examples and the "list does not purport to be exhaustive." *Id.* at 627 n.26.

Applying *Heller*, the Ninth Circuit has adopted a two-step framework when evaluating whether a challenged regulation or law infringes on the rights protected by the Second Amendment. *See Young v. Hawaii*, 992 F.3d 765, 783 (9th Cir. 2021) (en banc). First, the Ninth Circuit determines whether "the challenged law affects conduct that is protected by the Second Amendment" by looking to the "historical understanding of the scope of the right." *Id.* The Ninth Circuit considers "whether there is persuasive historical evidence showing that the regulation does not impinge on the Second Amendment right as it was historically understood. Laws restricting conduct that can be traced to the founding era and are historically understood to fall outside of the Second Amendment's scope may be upheld without further analysis." *Id.* Furthermore, if the challenged law falls within the "presumptively lawful regulatory measures" identified by *Heller*, the law may be upheld without further analysis. *Id.*

If the law is within the historical scope of the Second Amendment, or not presumptively lawful, the Ninth Circuit determines what level of scrutiny applies. *Id.* at 784. As the Ninth Circuit explained in *Young*, it has "understood Heller to require one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny." *Id.* (quoting *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016)).

30. Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?

Response: As a judge, this issue has not been presented to me. I am not presently aware of any United States Supreme Court or Ninth Circuit precedent that squarely addresses this issue. If I were confirmed to the Ninth Circuit and a case came before me that presented this issue, I would resolve it by carefully researching the law and impartially applying the law to the facts in the record.

31. Do you agree with Thomas Jefferson that the First Amendment erects "a wall of separation between Church & State"?

Response: The principle that the government may not favor one religion over another both "protect[s] the integrity of individual conscience in religious matters" and "guard[s] against the civic divisiveness that follows when the government weighs in on one side of religious debate." *McCreary Cnty. v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 876 (2005). However, in certain circumstances defined by the United States Supreme Court, religious symbols that have taken on secular meaning may coexist harmoniously with government. *See American Legion v. American Humanist Ass'n*, 139

S. Ct. 2067, 2090 (2019) (holding that a state's maintenance and display of a cross, "undoubtedly a Christian symbol," did not violate the Establishment Clause.)

32. Does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?

Response: As a judge, this issue has not been presented to me. If I were confirmed to the Ninth Circuit and a case came before me that presented this issue, I would resolve it by carefully researching the law and impartially applying the law to the facts in the record.

33. Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."

a. **Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?**

b. **How is a burden deemed to be "substantial[]" under current caselaw? Do you agree with this?**

Response: The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb–1(a), (b). The courts decide whether there is a burden on the exercise of religion under RFRA. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (concluding that a contraceptive mandate that forces plaintiffs to pay "an enormous sum of money" is clearly "a substantial burden on those beliefs").

In *Hobby Lobby*, the United States Supreme Court focused on two factors to find there was a substantial burden on the plaintiffs: (1) that non-compliance with the contraceptive mandate would create "severe" economic costs to plaintiffs; and (2) that compliance caused the objecting party to violate their sincere religious beliefs. 573 U.S. at 720-26. The Court warned that the job of a federal court is "narrow" on the second factor—only "'to determine' whether the line drawn reflects 'an honest conviction'." *Id.* at 725 (quoting *Thomas v. Review Bd. of Ind. Empl. Sec. Div.*, 450 U.S. 707, 716 (1981)).

In passing RFRA, Congress sought to "restore the compelling interest test" set out in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). *See City of Boerne v. Flores*, 521 U.S. 507, 515 (1997). Relying on *Sherbert* and *Yoder*, and prior to *Hobby Lobby*, the Ninth Circuit has held that "[u]nder RFRA, a 'substantial burden' is imposed only when individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit (*Sherbert*) or coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions (*Yoder*)."

Navajo Nation v. U.S. Forest Service, 535 F.3d 1058, 1069-70 (9th Cir. 2008) (en banc) (holding the use of recycled water on a ski area to make artificial snow on a portion of a public mountain sacred to Native American religion was not a substantial burden under RFRA).

I would follow the United States Supreme Court and Ninth Circuit precedent in determining whether a "substantial burden" exists under RFRA. Any personal views on the matter would be irrelevant.

34. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

Response: The First Amendment expressly guarantees the right to the free exercise of religion, and the United States Supreme Court has held that this right is a fundamental right. The United States Supreme Court's statement in *Bostock* is consistent with that holding. The United States Supreme Court has a number of precedents that have interpreted the Free Exercise Clause and set forth standards for determining whether state action violates it. One of these precedents held that state administrative officials do not have the discretionary power to "control in advance the right of citizens to speak on religious matters" on state streets. *Kunz v. People of State of New York*, 340 U.S. 290, 314 (1951). I faithfully and impartially follow United States Supreme Court and Ninth Circuit precedent and apply the standards set forth therein.

35. 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 give all applicants for a clerkship the same consideration and would continue to do so if confirmed. As a district judge, I have hired law clerks who were members of the Federalist Society.

36. Judge Stephen Reinhardt once explained that, because the Supreme Court hears a limited number of cases each year, part of his judicial mantra was, "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?

Response: All federal judges must fulfill their judicial oaths to "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States."

37. 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: There is no constitutional right to counsel in civil cases. Lawyers should make decisions about whom they choose to represent consistent with their ethical obligations.

38. Do you agree that the First Amendment is more often a tool of the powerful than the oppressed?

Response: As a judge, I adjudicate individual cases and am not aware of the parties' positions of power or oppression. I have no frame of reference to evaluate this statement.

39. Do Blaine Amendments violate the Constitution?

Response: In *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2259 (2020), the United States Supreme Court explained that the Blaine Amendment of the 1870s, which Congress nearly passed, would have added to the United States Constitution a provision prohibiting states from aiding sectarian schools. Montana's State Constitution had such a no-aid provision. *Id.* at 2251. Montana voters re-adopted Montana's no-aid provision in the 1970s. *Id.* at 2259. In *Espinoza*, the United States Supreme Court held that the Free Exercise Clause precluded the Montana Supreme Court from applying Montana's no-aid provision to bar religious schools from a state-funded scholarship program that was open to non-religious private schools. *Id.*

40. Is the right to petition the government a constitutionally protected right?

Response: The First Amendment to the Constitution protects the right "to petition the Government for a redress of grievances." U.S. Const. Amend. I. The United States Supreme Court's precedent "confirm[s] that the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011). The right to petition the government "is implicit in '[t]he very idea of government, republican in form.'" *McDonald v. Smith*, 472 U.S. 479, 482 (1985) (quoting *United States v. Cruikshank*, 92 U.S. 542 (1876)).

41. What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?

Response: The First Amendment has always "'permitted restrictions upon the content of speech in a few limited areas,' and has never 'include[d] a freedom to disregard these traditional limitations.'" *United States v. Stevens*, 559 U.S. 460, 468 (2010) (quoting *R.A.V. v. St. Paul*, 505 U.S. 377, 382-83 (1992)). Fighting words are one of the categories of speech "the prevention and punishment of which has never been thought to raise any Constitutional problem." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942). The United States Supreme Court has stated that fighting words are "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter

of common knowledge, inherently likely to provoke a violent reaction." *Cohen v. California*, 403 U.S. 15, 20 (1971); *accord Virginia v. Black*, 538 U.S. 343, 359 (2003).

42. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?

Response: The United States Supreme Court has held that the First Amendment "permits a State to ban a true threat." *Virginia v. Black*, 538 U.S. 343, 359 (2003) (internal quotation marks omitted). "True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Id.* (internal quotation marks omitted).

43. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?**

Response: In 2015, I contacted Christopher Kang, who was leading a national consortium of Asian Pacific American community organizations and had previously worked at the White House, about my interest in being considered for the Ninth Circuit. For a couple years after that we competed in an online fantasy football league. I do not recall competing in the same fantasy football league in the past few years.

44. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."

a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

45. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **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.**

Response: No.

c. **Are you currently in contact with anyone associated with Arabella Advisors? 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.

d. **Have you ever been in contact with anyone associated with Arabella Advisors? 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.

46. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**

a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

47. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."

a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

48. Please describe the selection process that led to your nomination to be a circuit judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: On September 28, 2015, I sent a letter to the State Chair of Senator Feinstein's bipartisan Judicial Advisory Committee that expressed my interest in being considered for the opening on the Ninth Circuit. On October 12, 2015, I submitted my application to Senator Feinstein's State Chair. On October 30, 2015, I interviewed with Senator Feinstein's Judicial Advisory Committee. On January 6, 2016, an attorney from the White House Counsel's Office notified me that I would be considered for the Ninth Circuit opening. Beginning on January 6, 2016, I had contact with U.S. Department of Justice Office of Legal Policy attorneys and Senator Feinstein's Judiciary Committee staff. On February 18, 2016, I met with Senator Feinstein's Judiciary Committee staff and interviewed with attorneys from the White House Counsel's Office and the Department of Justice. On February 25, 2016, President Obama submitted my nomination to the Senate. I had a confirmation hearing on July 13, 2016. On September

15, 2016, I was voted out of the Senate Judiciary Committee. My nomination was returned to President Obama on January 3, 2017.

On January 19, 2021, I submitted to the State Chair of Senator Feinstein's bipartisan Judicial Advisory Committee my application for any opening on the Ninth Circuit. I updated my application on March 16, 2021 and April 13, 2021.

On February 16, 2021, I submitted to the Statewide Chair of Senator Alex Padilla's bipartisan Judicial Evaluation Commission my application for any opening on the Ninth Circuit. I updated my application on April 15, 2021.

On May 28, 2021, an attorney from the White House Counsel's Office contacted me to confirm my interest in being considered for an opening on the Ninth Circuit. On June 7, 2021, an attorney from the White House Counsel's Office notified me that I would be considered for an opening on the Ninth Circuit. Since June 7, 2021, I have been in contact with attorneys from the Office of Legal Policy at the U.S. Department of Justice. On July 2, 2021, I was interviewed by Senator Padilla. On September 8, 2021, President Biden announced his intent to nominate me. On September 20, 2021, President Biden submitted my nomination to the Senate.

49. During your selection process did you communicate 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.

50. During your selection process did you communicate 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: My husband taught with former Senator Russ Feingold at Stanford Law School for many years, is a former member of the Board of Directors of the American Constitution Society, and continues to be involved in some American Constitution Society activities. During his conversations with former Senator Feingold, my husband mentioned my interest in being re-nominated to the Ninth Circuit.

51. During your selection process, did you communicate 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.

52. During your selection process did you communicate 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.

53. Please explain, with particularity, the process whereby you answered these questions.

Response: On October 13, 2021, I received these questions from the Office of Legal Policy (OLP). After reviewing the questions, case law, statutes, regulations, Federal Rules of Appellate Procedure, and case filings, I drafted my answers. OLP provided feedback on my draft, which I considered, before submitting my final answers to the Committee.

Nomination of The Honorable Lucy H. Koh to be
United States Circuit Judge for the Ninth Circuit
Questions for the Record
Submitted October 13, 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. **In a 2020 speech, you said, "We have to all actively check ourselves to make sure we're treating everyone fairly, everyone equally." Should people ever be treated differently than others because of their skin color or race?**

   Response: Judges must treat all litigants fairly and equally regardless of their skin color or race. The judges' oath requires judges to "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States."

4. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   Response: I follow all United States Supreme Court precedent. As a judge, it is improper for me to comment on any issues that may come before me. As a general matter, I do not comment on the correctness of United States Supreme Court precedent.

5. **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, 595 (2008), the United States Supreme Court concluded that "[t]here 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."

6. **Please describe what you believe to be the scope of the Second Amendment right to keep and bear arms.**

   Response: In *District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008), the United States Supreme Court held that a ban on firearms in the home violates the right protected

by the Second Amendment. The United States Supreme Court emphasized, that "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and provided three examples of presumptively valid regulations of firearms: (1) prohibitions on possession by "felons or the mentally ill"; (2) "laws forbidding the carrying of firearms in sensitive places such as schools or government buildings"; and (3) "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27. The United States Supreme Court noted that these were only examples and the "list does not purport to be exhaustive." *Id.* at 627 n.26.

Applying *Heller*, the Ninth Circuit has adopted a two-step framework when evaluating whether a challenged regulation or law infringes on the rights protected by the Second Amendment. *See Young v. Hawaii*, 992 F.3d 765, 783 (9th Cir. 2021) (en banc). First, the Ninth Circuit determines whether "the challenged law affects conduct that is protected by the Second Amendment" by looking to the "historical understanding of the scope of the right." *Id.* The Ninth Circuit considers "whether there is persuasive historical evidence showing that the regulation does not impinge on the Second Amendment right as it was historically understood. Laws restricting conduct that can be traced to the founding era and are historically understood to fall outside of the Second Amendment's scope may be upheld without further analysis." *Id.* Furthermore, if the challenged law falls within the "presumptively lawful regulatory measures" identified by *Heller*, the law may be upheld without further analysis. *Id.*

If the law is within the historical scope of the Second Amendment, or not presumptively lawful, the Ninth Circuit determines what level of scrutiny applies. *Id.* at 784. As the Ninth Circuit explained in *Young*, it has "understood *Heller* to require one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny." *Id.* (quoting *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016)).

7. **Please describe what you believe to be the Ninth Circuit's holding in *FTC v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020).**

Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974, 1005 (9th Cir. 2020), the Ninth Circuit held that the Federal Trade Commission failed to show that three of Qualcomm's business practices violated Sections 1 and 2 of the Sherman Act or the Federal Trade Commission Act. First, the Ninth Circuit held that "Qualcomm's practice of licensing its [standard essential patents] exclusively at the [Original Equipment Manufacturer] level does not amount to anticompetitive conduct in violation of § 2, as Qualcomm is under no antitrust duty to license rival chip suppliers." *Id.* Although the Ninth Circuit declined to address whether "Qualcomm has breached any of its [fair, reasonable, and non-discriminatory] commitments," the Ninth Circuit stated that "the remedy for such a breach lies in contract and patent law." *Id.* Second, the Ninth Circuit held that "Qualcomm's patent-licensing royalties and 'no license, no chips' policy do not impose an anticompetitive surcharge on rivals' modem chip sales." *Id.* According to the

Ninth Circuit, "these aspects of Qualcomm's business model are 'chip-supplier' neutral and do not undermine competition in the relevant antitrust markets." *Id.* Third, the Ninth Circuit held that "Qualcomm's 2011 and 2013 agreements with Apple ha[d] not had the actual or practical effect of substantially foreclosing competition in the [code division multiple access] modem chip market." *Id.* "Furthermore, because these agreements were terminated years ago by Apple itself, there is nothing to be enjoined." *Id.*

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).**

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the United States Supreme Court clarified 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." *Id.* "It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon*, the United States Supreme Court also clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* "Comparability is concerned with the risks various activities pose, not the reasons why people gather." *Id.*

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

In *Tandon*, the United States Supreme Court also determined that even if the government withdraws or modifies a COVID restriction during the course of litigation, that does not necessarily moot the case. *Id.* "And so long as a case is not moot, litigants otherwise entitled to emergency injunctive relief remain entitled to such relief where the applicants 'remain under a constant threat' that government officials will use their power to reinstate the challenged restrictions.'" *Id.* (quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020) (per curiam)).

9. **In the Supreme Court's opinion in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Court said that it was "unsurprising" that the litigants were entitled to relief. What do you believe the Court meant by that?**

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1297-98 (2021), the United States Supreme Court stated that the case was "the fifth time the Court ha[d] summarily

rejected the Ninth Circuit's analysis of California's COVID restrictions on religious exercise."

10. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 141 S. Ct. 2090 (2021).**

Response: In *Greer v. United States*, 141 S. Ct. 2090 (2021), the question before the United States Supreme Court was whether the defendants were entitled to plain error relief for their claims under *Rehaif v. United States*, 139 S. Ct. 2191 (2019), which held that felons must know they are felons to be convicted of being felons in possession of firearms. The United States Supreme Court held that the defendants were not entitled to plain error relief because the defendants failed to show that the error the district court made in this case affected their "substantial rights." *Id.* at 2097. The United States Supreme Court also noted that an appellate court conducting plain error review may review the entire record, not just the record from the particular proceeding where an error occurred. *Id.* at 2098 (citing *United States v. Vonn*, 535 U.S. 55, 58-59 (2002)). Based on that principle, the United States Supreme Court held that "when an appellate court conducts plain-error review of a *Rehaif* instructional error, the court can examine relevant and reliable information from the entire record—including information contained in a pre-sentence report." *Id.*

11. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 141 S. Ct. 1858 (2021).**

Response: In *Terry v. United States*, 141 S. Ct. 1858 (2021), the United States Supreme Court addressed the meaning of Section 404 of the First Step Act. That section of the First Step Act makes retroactive the provisions of the Fair Sentencing Act, which increased the amounts of crack cocaine necessary to trigger mandatory minimum sentences. *See* First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194; Fair Sentencing Act of 2010, Pub. L. 111-220, 124 Stat. 2372. Accordingly, the First Step Act "gives certain crack offenders an opportunity to receive a reduced sentence." *Terry*, 141 S. Ct. at 1860.

In *Terry*, the United States Supreme Court held that the First Step Act does not provide relief for individuals who were convicted of crack cocaine offenses but were not subject to mandatory minimum sentences, even if they were sentenced based on the quantity of cocaine they possessed. *Id.* at 1863-64.

12. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021).**

Response: In *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021), the United States Supreme Court considered the question of whether a Temporary Protected Status ("TPS") recipient who entered the country unlawfully can still become a lawful permanent resident. *Id.* at 1812. "[A] nonimmigrant's eligibility for such an adjustment to permanent status depends (with exceptions not relevant here) on an 'admission' into this country. And an 'admission' is defined as 'the lawful entry of the alien into the United

States after inspection and authorization by an immigration officer.'" *Id.* at 1811 (quoting 8 U.S.C. § 1101(a)(13)(A)). The United States Supreme Court held that the conferral of TPS is not an "admission" into the United States. *Id.* at 1812-13. Thus, the petitioner in *Sanchez* could not become a lawful permanent resident because he was never lawfully "admitted" into the United States, and his TPS did not change that fact. *Id.* at 1815.

13. **Please describe what you believe to be the Supreme Court's holding in *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021).**

Response: In *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2334 (2021), the United States Supreme Court held that the following two Arizona voting laws did not violate Section 2 of the Voting Rights Act ("VRA"): (1) "[v]oters who choose to vote in person on election day in a county that uses the precinct system must vote in their assigned precincts," and (2) "[f]or those who choose to vote early by mail," it is a "crime for any person other than a postal worker, an elections official, or a voter's caregiver, family member, or household member to knowingly collect an early ballot."

The Democratic National Committee challenged both Arizona laws under Section 2 of the VRA. *Id.* Section 2(a) of the VRA prohibits state voting laws that "deny or abridge the right of any citizen of the United States to vote on account of race or color . . . as provided in subsection (b)." 52 U.S.C. § 10301(a). In turn, Section 2(b) of the VRA provides that "[a] violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a)." *Id.* § 10301(b).

The United States Supreme Court clarified the standard for assessing claims under Section 2 of the VRA. The Court noted that the "key requirement" of Section 2 is "that the political processes leading to nomination and election . . . must be 'equally open' to minority and non-minority groups alike." *Brnovich*, 141 S. Ct. at 2337. Additionally, Section 2's requirement that "the totality of circumstances" be considered means that "any circumstance that has a logical bearing on whether voting is 'equally open' and affords equal 'opportunity' may be considered." *Id.* at 2338. The Court noted five "important circumstances," including "the size of the burden imposed by a challenged voting rule." *Id.* at 2338-40.

Applying this standard, the Court determined that neither of the challenged Arizona voting laws violated Section 2 of the VRA. The "out-of-precinct rule" did not impose a heavy burden because "[h]aving to identify one's own polling place and then travel there to vote does not exceed the 'usual burdens of voting.'" *Id.* at 2343-44. Similarly, the rule restricting the collection of early ballots did not impose a heavy burden because voters had numerous options for submitting those ballots before election day. *Id.* at 2346. For both laws, none of the other "circumstances" indicated that the laws abridged the opportunities for racial minorities to vote. *Id.* at 2343-46.

14. **Please describe what you believe to be the Supreme Court's holding in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).**

Response: In *Jennings v. Rodriguez*, 138 S. Ct. 836 (2018), the United States Supreme Court was asked to interpret several provisions of the Immigration and Nationality Act that authorized the government to detain aliens in the course of immigration proceedings. First, the United States Supreme Court analyzed provisions in Section 1225, which applied to two groups of aliens seeking entry into the United States. *Id.* at 837. The first group consisted of aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation" or those aliens "designated by the Attorney General in his discretion." *Id.* (citing 8 U.S.C. § 1225(b)(1)). The second group consisted of all applicants for admission not included in the first group." *Id.* (citing 8 U.S.C. § 1225(b)(2)). Aliens in the first group who sought asylum could be "detained for further consideration of the application for asylum." *Id.* (citing 8 U.S.C. 1225(b)(1)(B)(ii)). Aliens in the second group "shall be detained" for removal proceedings if immigration officers decide that the alien is not without a doubt entitled to be admitted into the country. *Id.* (citing 8 U.S.C. § 1225(b)(2)(A)).

The United States Supreme Court was asked to determine whether the provisions of Section 1225(b) should be construed to contain implicit limitations on the length of detention and a requirement that bond hearings be made available for the aliens specified under Sections 1225(b)(1) and 1225(b)(2). The United States Supreme Court held that the language of Section 1225 did not contain any such requirements. *Jennings*, 138 S. Ct. at 842 ("[N]othing in the statutory text imposes any limit on the length of detention. And nothing in § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.").

Second, the United States Supreme Court analyzed 8 U.S.C. § 1226, which covers aliens who are already present in the United States. Section 1226 sets out two categories of aliens who are already present in the United States: criminal aliens, who are covered by Section 1226(c), and all other present aliens, who are covered by Section 1226(a). Criminal aliens covered by 1226(c) may be released on bond or parole "only if" the Attorney General decides "both that doing so is necessary for witness-protection purposes and that the alien will not pose a danger or flight risk." *Jennings* 138 S. Ct. at 846. All other present aliens covered by 1226(a) "may be" released by the Attorney General on bond or parole. *Id.*

The United States Supreme Court was asked to determine whether Section 1226(c) should be interpreted to "include an implicit 6-month time limit on the length of mandatory detention." *Id.* The United States Supreme Court held that an interpretation requiring a limit on the length of mandatory detention for criminal aliens present in the United States "falls far short of a plausible statutory construction." *Id.* (internal quotation marks omitted). Instead, the United States Supreme Court held that the language of Section 1226(c) "expressly and unequivocally imposes an affirmative *prohibition* on releasing detained aliens under any other conditions" than those defined expressly in the statute. *Id.* at 847.

Third, the United States Supreme Court was asked to determine whether Section 1226(a), which covers all other aliens present in the United States, provides procedural protections requiring periodic bond hearings and a determination "by clear and convincing evidence" that the alien's continued detention is not necessary. *Id.* The United States Supreme Court held that nothing in Section 1226(a)'s text "which says only that the Attorney General 'may release' the alien 'on . . . bond'" supports the procedural requirements requested by the parties. *Id.* (quoting 8 U.S.C. § 1226(a)).

15. **Please describe what you believe to be the Supreme Court's holding in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).**

Response: In *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), the United States Supreme Court considered President Trump's Proclamation restricting travel to the United States by citizens of eight countries. The United States Supreme Court made at least the following three separate holdings in this case. First, the Proclamation did not exceed the president's authority under federal immigration laws because the president has broad discretion to suspend the entry of noncitizens into the United States. *Id.* at 2408. Second, the Proclamation did not discriminate based on nationality in violation of Section 1152(a)(1)(A) of the Immigration and Nationality Act. The United States Supreme Court clarified that although the section bars discrimination, the section does not hamper the president's authority to block the entry of nationals from some countries. *Id.* at 2415. Finally, the President's Proclamation did not violate the Establishment Clause of the First Amendment. After assuming rational basis review applied, the United States Supreme Court held that because the Proclamation was based on "a sufficient national security justification," rather than anti-Muslim animus, the Proclamation did not violate the First Amendment. *Id.* at 2423.

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

Response: The United States Supreme Court has emphasized that arbitration agreements are "on an equal footing with other contracts, and require[] courts to enforce them according to their terms. Like other contracts, however, they may be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability.'" *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67-68 (2010) (citations omitted). The Federal Arbitration Act "establishes procedures by which federal courts implement" the substantive provisions of the Act, including staying federal litigation and compelling arbitration. *Id.* at 68.

17. **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 October 13, 2021, I received these questions from the Office of Legal Policy (OLP). After reviewing the questions, case law, statutes, regulations, Federal Rules of Appellate Procedure, and case filings, I drafted my answers. OLP provided feedback on my draft, which I considered, before submitting my final answers to the Committee.

18. **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 Lucy Haeran Koh, Nominee for the Ninth 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. **Big Tech companies possess a dangerous and overbearing power to silence the voices of millions of Americans, primarily conservatives, who want to exercise their First Amendment right to freedom of speech. In your opinion regarding PragerU and YouTube, you found that YouTube was not a state actor. Under existing precedent, what is the threshold for when a private company's conduct can be treated as state action subject to the First Amendment?**

   Response: The United States Supreme Court has explained that "a private entity can qualify as a state actor in a few limited circumstances—including, for example, (i) when the private entity performs a traditional, exclusive public function; (ii) when the government compels the private entity to take a particular action; or (iii) when the government acts jointly with the private entity." *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019). Only "very few" functions fall into the first category. *Id.* at 1929. These include running elections and operating a company town. *Id.* In addition, the United States Supreme Court has also found in some circumstances that a private entity may be a state actor "when the government has outsourced one of its constitutional obligations to a private entity." *Id.* at 1929 n.1. Conversely, the United States Supreme Court has ruled that each of the following functions does not qualify as a "traditional, exclusive public function": "running sports associations and leagues, administering insurance payments, operating nursing homes, providing special education, representing indigent criminal defendants, resolving private disputes, and supplying electricity." *Id.* (holding operating public access channels on a cable system was also not a traditional and exclusive public function); *see also Prager University v. Google LLC*, 951 F.3d 991 (9th Cir. 2020) (holding YouTube was not transformed into a state actor because it hosts speech on a private platform).

2. **If a senior executive official were to instruct a tech company to remove speech from its online platform that the government flags as "misinformation," "disinformation," or "harmful," and the company complies, would that constitute state action?**

   Response: If the issue came before me, I would apply the framework in my response to Question 1.

3. **If a senior executive official were to instruct a tech company to promote speech that is preferable or politically "friendly" to the incumbent government, and the company complies, would that constitute state action?**

   Response: If the issue came before me, I would apply the framework in my response to Question 1.

4. **Ordering a permanent global injunction—especially when done in error—has a major impact on the nation and on the global economy. In *FTC v. Qualcomm*, you**

entered a permanent and global injunction that would've stopped Qualcomm from conducting some of its core business practices. Specifically, you ordered Qualcomm to renegotiate all its chip contracts worldwide and change its pricing structure. Your decision was later reversed. What did you get wrong in that case, and what lessons have you learned?

Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020), the Ninth Circuit reversed my order holding that Qualcomm's licensing practices violated the Sherman Act and the Federal Trade Commission Act ("FTC Act"). I will faithfully follow the Ninth Circuit precedent in any future cases.

My order has been reversed and has no legal effect. I provide an explanation for my ruling solely to respond to your question. The bench trial for this case consisted of 10 days of evidence and 1 day of argument. *Fed. Trade Comm'n v. Qualcomm Inc.*, 411 F. Supp. 3d 658, 669 (N.D. Cal. 2019). During the trial, 50 witnesses testified, and the parties submitted 276 exhibits. The parties filed 221 pages of proposed findings of fact and conclusions of law. After reviewing the trial record and considering the parties' arguments, I issued a 233-page order with extensive factual and credibility findings and legal analysis.

My order analyzed three causes of action: (1) restraint of trade under Sherman Act § 1; (2) monopolization under Sherman Act § 2; and (3) unfair methods of competition under the FTC Act, which overlaps with the Sherman Act. "Section 1 of the Sherman Act, 15 U.S.C. § 1, prohibits [e]very contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States." *Allied Orthopedic Appliances, Inc. v. Tyco Health Care Grp. LP*, 592 F.3d 991, 996 (9th Cir. 2010). "To establish liability under § 1, a plaintiff must prove (1) the existence of an agreement, and (2) that the agreement was an unreasonable restraint of trade." *Aerotec Int'l, Inc. v. Honeywell Int'l, Inc.*, 836 F.3d 1171, 1178 (9th Cir. 2016). "Section 2 of the Sherman Act makes it unlawful for a firm to 'monopolize.'" *United States v. Microsoft Corp.*, 253 F.3d 34, 50 (D.C. Cir. 2001). "The offense of monopolization has two elements: '(1) the possession of monopoly power in the relevant market'"; and (2) "the willful acquisition or maintenance of that power" through exclusionary conduct "as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.'" *Id.* (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966)).

The FTC identified three specific practices as anticompetitive. First, the FTC challenged Qualcomm's practice of refusing to sell code division multiple access ("CDMA") modem chips and premium Long Term Evolution ("LTE") modem chips to an original equipment manufacturer ("OEM") unless "the OEM sign[ed] a separate patent license agreement." *Qualcomm*, 411 F. Supp. 3d at 697. Second, the FTC challenged Qualcomm's practice of refusing to provide licenses for standard essential patents ("SEPs") to rival chip manufacturers. *Id.* at 758. Third, the FTC challenged Qualcomm's de facto exclusive dealing contracts with Apple. *Id.* at 763.

After considering all the evidence and the parties' arguments, I found that "Qualcomm's licensing practices have strangled competition in the CDMA and premium LTE modem chip markets for years, and harmed rivals, OEMs, and end consumers in the process." *Qualcomm Inc.*, *Id.* at 812. I also found that "Qualcomm's conduct 'unfairly tends to destroy competition itself.'" *Id.* (quoting *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993)). Applying the above-described legal standards to these factual findings, I "conclude[d] that Qualcomm's licensing practices [we]re an unreasonable restraint of trade under § 1 of the Sherman Act and exclusionary conduct under § 2 of the Sherman Act." *Id.* (citing *Microsoft*, 253 F.3d at 58-59). Thus, I held that "Qualcomm's practices violate[d] § 1 and § 2 of the Sherman Act" and that Qualcomm was "liable under the FTC Act, as 'unfair methods of competition' under the FTC Act include 'violations of the Sherman Act.'" *Id.* (quoting *Fed. Trade Comm'n v. Cement Inst.*, 333 U.S. 683, 693-94 (1948)).

On appeal, the Ninth Circuit reviewed a different set of arguments and evidence than I did. First, the FTC changed its theory regarding Qualcomm's refusal to license SEPs to rival chip manufacturers. Second, the Department of Justice submitted merits arguments in support of Qualcomm for the first time on appeal and introduced new evidence on appeal. Third, retired Federal Circuit Judge Paul R. Michel submitted for the first time on appeal an argument about a method for calculating patent royalties and an argument that antitrust law should not be used to resolve disputes involving patent license agreements. Fourth, former FTC Commissioner Joshua Wright submitted for the first time on appeal an argument that the antitrust laws should not be used to resolve contract disputes between private parties. The Ninth Circuit noted all these developments and specifically relied on Judge Michel's and Mr. Wright's briefs for its conclusion regarding Qualcomm's refusal to license SEPs to rival chip manufacturers. *Qualcomm*, 969 F.3d at 997.

The Ninth Circuit held the following, which is the law that I will apply in future cases before me:

The Ninth Circuit held that the FTC failed to show that Qualcomm's practices violated Section 2 of the Sherman Act. First, the Ninth Circuit held that "Qualcomm's practice of licensing its SEPs exclusively at the OEM level does not amount to anticompetitive conduct in violation of § 2, as Qualcomm is under no antitrust duty to license rival chip suppliers." *Id.* at 1005. Although the Ninth Circuit declined to address whether "Qualcomm has breached any of its [fair, reasonable, and non-discriminatory] commitments," the Ninth Circuit stated that "the remedy for such a breach lies in contract and patent law." *Id.* Second, the Ninth Circuit held that "Qualcomm's patent-licensing royalties and 'no license, no chips' policy do not impose an anticompetitive surcharge on rivals' modem chip sales." *Id.* According to the Ninth Circuit, "these aspects of Qualcomm's business model are 'chip-supplier' neutral and do not undermine competition in the relevant antitrust markets." *Id.* Third, the Ninth Circuit held that "Qualcomm's

2011 and 2013 agreements with Apple ha[d] not had the actual or practical effect of substantially foreclosing competition in the CDMA modem chip market." *Id.* "Furthermore, because these agreements were terminated years ago by Apple itself, there [was] nothing to be enjoined." *Id.*

5. You have stated that "we all have conscious or subconscious assumptions about people based on who they are and we all have to be aware that that exists." To help us assess your capacity for judicial impartiality, please list and describe any and all "assumptions about people based on who they are" that you hold and are aware of.

Response: I was referring to social science research that shows that individuals often respond differently in a variety of tests to people of different races, genders, and appearances. I do my level best to treat everyone equally and fairly. I am not aware that I hold any bias toward any person or group, but I believe knowledge of the risk of bias helps us reduce the risk that we will inadvertently treat people differently when we interact with them.

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

Response: In *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973), the United States Supreme Court held that private citizens generally "lack standing to contest the policies of the prosecuting authority" when that citizen is neither prosecuted nor threatened with prosecution. Particularly in the realm of criminal law, the "Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *United States v. Nixon*, 418 U.S. 683, 693 (1974).

7. Describe how you would characterize your judicial philosophy on the federal bench thus far, and identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: My judicial philosophy is to fulfill my judicial oath, which requires that I "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon me" under the Constitution and laws of the United States. This requires that I understand the limited role of the judiciary, which is to carefully consider the facts in the record and apply the law faithfully and impartially in deciding the limited issues before me. I also consider all of the parties' arguments and strive to issue timely orders that clearly and comprehensively state my reasoning. I follow all of the United States Supreme Court's precedent. I have not studied the judicial philosophies of Supreme Court Justices and cannot say which Supreme Court Justice's philosophy is most analogous to my own.

8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: The Constitution is an enduring document that sets forth the principles that govern our nation. The Constitution does not change unless amended pursuant to Article V.

9. Please briefly describe in your own words your understanding of the interpretative method known as originalism.

Response: Black's Law Dictionary defines "originalism" as the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted."

10. Please briefly describe in your own words your understanding of 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."

11. If you were to be presented with a constitutional issue of first impression—that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court conducted a textual analysis and considered contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the text of the Second Amendment at the time of ratification.

12. 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*, 554 U.S. 570 (2008), the United States Supreme Court conducted a textual analysis and considered contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the text of the Second Amendment at the time of ratification. Similarly, in *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738 (2020), the United States Supreme Court stated: "This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."

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

Response: Yes.

14. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor, or a small business operated by observant owners? What are those limits?

Response: In *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878-82 (1990), the United States Supreme Court held that a law which incidentally burdens religion ordinarily is not subject to strict scrutiny under the Free Exercise Clause if the law is neutral and generally applicable. If a law is neutral and generally applicable, rational basis scrutiny applies. *Id.*

Determining whether a law is neutral and generally applicable requires a two-part analysis. In turn, each part requires two steps.

First, a court must determine whether a law is neutral. That determination requires two steps. The first step asks whether the law is facially neutral. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S 520, 533-34 (1993). If the law is not facially neutral, the law is subject to strict scrutiny. *Id.* If the law is facially neutral, then the court must proceed to the second step. *Id.* at 534 ("Facial neutrality is not determinative.").

The second step asks whether the facially neutral law's enactment or enforcement was motivated by religious animus on the part of the governmental actor. A facially neutral law whose enactment or enforcement was motivated by religious animus is subject to strict scrutiny. Courts must review the record to determine whether there is any evidence of religious animus. *Lukumi*, 508 U.S. at 534-42 (facially neutral city ordinances were non-neutral because they were prompted by concern for Santeria religious practices). In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the United States Supreme Court held that the government's application of a facially neutral public accommodations law violated the Free Exercise Clause because hostile statements by officials in public meetings showed that the application of the law was motivated by religious animus. *Id.* at 1729-31 (2018) (finding open expressions of hostility by state civil rights commissioners sufficient to show animus).

Second, a court must determine whether a law is generally applicable. That determination also requires two steps. The first step asks whether any exemptions to the law invite "the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). If the law makes such an invitation, the law is not generally applicable and is subject to strict scrutiny. If the law does not make such an invitation, then the court must proceed to the second step.

The second step asks whether the law is overbroad and underinclusive such that it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 141 S. Ct. at 1877. To

determine whether a restriction is overbroad and underinclusive, courts must compare religious conduct with comparable secular conduct. *See Lukumi*, 508 U.S. at 544-45. In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the United States Supreme Court clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* at 1296. Specifically, in *Tandon*, the Court held: "Comparability is concerned with the risks various activities pose, not the reasons why people gather" to engage in those activities. *Id.*

In *Tandon*, the United States Supreme Court also clarified 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." *Id.* The Court explained that "[i]t is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

However, not every application of "a valid and neutral law of generally applicability is necessarily constitutional under the Free Exercise Clause." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 n.2 (2017). For example, the United States Supreme Court has found a ministerial exception to Title VII employment discrimination laws. *See, e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) (holding that Title VII's prohibition on employment discrimination does not apply to churches when they hire or fire ministers); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) (precluding two lay teachers who instructed students in religious studies and prepared students for participation in Church services from pursuing Title VII employment discrimination suits against religious schools).

In addition, the Religious Freedom Restoration Act of 1993 (RFRA) prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb–1(a), (b). The United States Supreme Court has held that RFRA applies both to religious organizations such as Little Sisters of

the Poor, *see Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020), and to small businesses operated by observant owners, *see Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719 (2014).

15. Is it ever permissible for the government to discriminate against religious organizations or religious people?

Response: Please see my response to Question 14.

16. President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: As a United States District Judge, I am bound by the United States Supreme Court's precedent regardless of that Court's size or composition, and it would be inappropriate for me to comment on whether the size of that Court should be changed.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), the United States Supreme Court concluded that "[t]here 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."

18. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: No.

19. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: No.

20. If you are to join the federal bench, and supervise along with your colleagues the court's human resources programs, will it be appropriate for the court to provide its employees trainings which include the following:

a. **One race or sex is inherently superior to another race or sex;**

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

d. **Meritocracy or related values such as work ethic are racist or sexist.**

Response: I am not aware of any such trainings at my court, the content of trainings provided by the Ninth Circuit, or what role, if any, I would have in determining the content of trainings provided by the Ninth Circuit, if confirmed. All trainings provided by federal courts should be consistent with the Constitution and laws of the United States and should be consistent with sound pedagogy.

21. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: I am not aware of any such trainings at my court, the content of trainings provided by the Ninth Circuit, or what role, if any, I would have in determining the content of trainings provided by the Ninth Circuit, if confirmed. All trainings provided by federal courts should be consistent with the Constitution and laws of the United States and should be consistent with sound pedagogy.

22. Is the criminal justice system systemically racist?

Response: As a judge for the last 14 years, I adjudicate cases raising specific claims of discrimination. These cases require me to determine questions such as whether a claim has been stated, whether administrative remedies have been exhausted, and whether statutes of limitations bar a claim. I also decide whether there is a factual material dispute such that the case should proceed to trial. The juries decide whether the law has been violated, and if so, what the remedy should be. I have no frame of reference or mechanism to judge whether the criminal justice system is racist and have never had that issue come before me. However, I understand that in *Kimbrough v. United States*, 552 U.S. 85, 98 (2007), the United States Supreme Court noted the United States Sentencing Commission's finding that the 100 to 1 ratio for crack cocaine versus powder cocaine sentencing had created the perception that the criminal justice system was promoting racial disparities.

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

Response: Article II of the Constitution gives the President the power, with the advice and consent of the Senate, to make appointments to high-level political positions in the federal government. As a judge, it is not for me to comment on what is or is not appropriate for the President and Senate to consider regarding political appointments.

24. Does the President have the authority to abolish the death penalty?

Response: Article I of the Constitution vests Congress with "[A]ll legislative Powers herein granted." Pursuant to that authority, Congress has enacted 18 United States Code § 3591, which states that a defendant who has been found guilty of certain offenses "shall

be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense." It would thus require appropriate legislation duly passed by Congress and signed into law by the President to amend the current criminal code regarding the availability of capital punishment for certain offenses. However, Article II of the Constitution grants the President the "Power to grant Reprieves and Pardons for Offenses against the United States" in individual cases.

25. Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS.*

Response: In *Alabama Association of Realtors v. Dep't. of Health and Human Servs.*, 141 S. Ct. 2485, 2487-88 (2021), the United States Supreme Court vacated the district court's stay of the district court's order concluding the Centers for Disease Control lacked statutory authority to impose an eviction moratorium. The United States Supreme Court applied the governing four factor test announced in *Nken v. Holder*, 556 U.S. 418 (2009): "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Alabama Ass'n of Realtors*, 141 S. Ct. at 2487. The United States Supreme Court concluded that: "it is difficult to imagine [the plaintiffs] losing," the moratorium has put the plaintiffs "at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery," "the Government's interests have decreased," and that although "the public has a strong interest in combating the spread of the COVID-19 Delta variant," agencies may not do so unlawfully. *Id.* at 2488-90.

26. Is unlawfully setting a building on fire, amidst general rioting, a violent act under existing federal criminal law?

Response: Federal criminal law has several statutes that may encompass violent acts, including the: (1) Armed Career Criminal Act, which increases sentences for "certain federal defendants who have three prior convictions 'for a violent felony,' including 'burglary, arson, or extortion,'" *Descamps v. United States*, 570 U.S. 254, 257 (2013); (2) Immigration and Nationality Act, which "renders deportable any alien convicted of an 'aggravated felony' after entering the United States" and includes "a crime of violence" within the definition of aggravated felony, *Sessions v. Dimaya*, 138 S. Ct. 1204, 1211 (2018); and (3) United States Sentencing Guidelines which contain mandatory provisions that increase a defendant's criminal history for prior convictions for a crime of violence, *see, e.g.*, *United States v. Velasquez-Reyes*, 427 F.3d 1227, 1229 (9th Cir. 2005). In all of these circumstances, to determine whether the offense in question would qualify as a "violent felony" or "crime of violence" the United States Supreme Court has applied the categorical approach established in *Taylor v. United States*, 495 U.S. 575, 600 (1990). To my knowledge, this question is unresolved, as it would depend on the specific wording of the individual state statute in question compared to the generic definition of

the federal crime under the *Taylor* categorical approach. *See, e.g.*, *Velasquez-Reyes*, 427 F.3d at 1229-30 (concluding Washington's second degree arson statute fell within the general federal definition of arson and qualified as a "crime of violence" under the Sentencing Guidelines). If the issue came before me, I would similarly apply the categorical approach by comparing the relevant statute against the relevant federal criminal law.

27. Are students accused of sexual misconduct entitled to due process?

Response: The United States Supreme Court has held that the Due Process Clause can apply to public education institutions. *See, e.g.*, *Goss v. Lopez*, 419 U.S. 565, 579 (1975) ("The Due Process Clause will not shield [a student] from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted."). "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). The United States Supreme Court has defined liberty interests to encompass instances where "a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," whereas property interests must come from "independent source[s] such as state law." *Id.* at 573, 577. Lastly, private schools, without more, do not act under the color of state law and are not subject to the requirements of the Due Process Clause. *See Rendell-Baker v. Kohn*, 457 U.S 830, 836-37 (1982).

28. In *Americans for Prosperity Foundation v. Bonta,* the Court majority ruled that California's disclosure requirement was facially invalid because it burdens donors' First Amendment rights to freedom of association. However, the majority was evenly split as to which standard of scrutiny should apply to such cases. Please explain your understanding of the two major arguments, and which of the two standards an appellate judge is bound to apply?

Response: In *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382-83 (2021), Chief Justice Roberts, joined by Justices Kavanaugh and Barrett, stated that the standard of review that applies to First Amendment challenges to compelled disclosure is known as "exacting scrutiny." To withstand "exacting scrutiny," "there must be a 'substantial relation between the disclosure requirement and a sufficiently important government interest.'" *Id.* at 2383 (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010)).

Justice Thomas, who concurred in part and concurred in the judgment, would have applied strict scrutiny for the compelled disclosure requirement at issue. *Id.* at 2390 (Thomas, J., concurring in part and concurring in the judgment). Justice Alito, joined by Justice Gorsuch, wrote that there was "no need to decide which standard should be applied here or whether the same level of scrutiny should apply in all cases in which the compelled

disclosure of associations is challenged under the First Amendment." *Id.* at 2392 (Alito, J., concurring in part and concurring in the judgment).

The United States Supreme Court in *Marks v. United States*, 430 U.S. 188 (1977), gave advice to lower courts on how to interpret fragmented United States Supreme Court holdings. Specifically, "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred on the judgment on the narrowest grounds.'" *Marks*, 430 U.S. at 193 (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976)). I would therefore follow the United States Supreme Court's instruction in *Marks* to determine the standard to apply in future cases.

29. Please explain your understanding of the Supreme Court's holding in *Apple v. Pepper*. How does it reconcile with *Illinois Brick*?

Response: In *Apple v. Pepper*, 139 S. Ct. 1514 (2019), the United States Supreme Court held that owners of iPhones who purchased applications from Apple's "App Store" could bring an antitrust claim alleging that Apple had "monopolized the retail market for the sale of apps." *Id.* at 1518. Section 4 of the Clayton Act provides that "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue." 15 U.S.C. § 15(a). However, in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), the United States Supreme Court held that a person may bring a Clayton Act claim against an alleged antitrust violator only if the person directly purchased a product from the alleged antitrust violator. *Id.* at 745-46. Thus, *Illinois Brick* established a bright-line rule that if "manufacturer A sells to retailer B, and retailer B sells to Consumer C, then C may not sue A." *Pepper*, 139 S. Ct. at 1521. In *Pepper*, the United States Supreme Court held that because "iPhone owners bought the apps directly from Apple," "the iPhone owners were direct purchasers who may sue Apple for alleged monopolization" under *Illinois Brick*. *Id.* at 1520.

30. In *Fulton v. City of Philadelphia*, the Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Please explain the Court's holding in the case.

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878-81 (2021), the United States Supreme Court held that section 3.21 of Philadelphia's standard foster care contract was "not generally applicable as required by *Smith*" and thus, strict scrutiny applied. The United States Supreme Court reached this conclusion because the provision at issue "incorporates a system of individual exemptions" and "[t]he creation of a formal mechanism for granting exceptions renders a policy not generally applicable." *Id.* at 1878-79. Applying strict scrutiny, the United States Supreme Court concluded that "the

interest of the City in the equal treatment of prospective foster parents and foster children . . . cannot justify denying [plaintiff] an exception for its religious exercise." *Id.* at 1882. Accordingly, the provision "cannot survive strict scrutiny, and violates the First Amendment." *Id.*

31. In *Carpenter v. United States*, what criteria did the Court use to distinguish between phenomena that are covered by the 4th Amendment 3rd Party Doctrine and those that are not?

Response: In *Carpenter v. United States*, 138 S. Ct. 2206 (2018), the United States Supreme Court explained that two factors should be considered when determining whether to apply the third-party doctrine to a new context. First, a court must consider the "'nature of the particular documents sought' to determine whether 'there is a legitimate 'expectation of privacy' concerning their contents.'" *Id.* at 2219. (internal citations omitted). Second, a court must determine whether the information was "truly 'shared' as one normally understands the term." *Id.* at 2220.

32. Please explain the Supreme Court's holding and reasoning in *Associated Press v. United States*.

Response: In *Associated Press v. United States*, 326 U.S. 1 (1945), the United States Supreme Court held that the Associated Press ("AP"), a joint venture of over 1,200 newspapers, violated the Sherman Act by denying membership to newspapers that competed with existing members at the local level. The AP operated by collecting news, both from its own reporters and from its member newspapers then distributing that news to all members. *Id.* at 3-4. However, the AP's By-Laws provided that a newspaper which competed at the local level with an existing AP member could only join if (1) the member-competitor gave permission or (2) if a majority of AP members voted for admission and the new member paid a substantial fee. *Id.* at 4-5. The By-Laws also prevented members from sharing news with non-members. *Id.* "The joint effect of [AP's] By-Laws," the United States Supreme Court explained, was "to block all newspaper non-members from any opportunity to buy news from AP or any of its publisher members." *Id.* at 9.

The United States Supreme Court determined that the "By-Laws on their face, and without regard to their past effect, constitute restraints of trade." *Id.* at 12. Specifically, the "[i]nability to buy news from the largest news agency, or any one of its multitude of members, can have the most serious effects on the publication of competitive newspapers." *Id.* at 13. Accordingly, the AP's By-Laws "tend[ed] to block the initiative which brings newcomers into a field of business and to frustrate the free enterprise system which it was the purpose of the Sherman Act to protect." *Id.* at 13-14.

The United States Supreme Court rejected the AP's argument that the AP had an unlimited right to "choose [its] associates." *Id.* at 14. The United States Supreme Court explained that, although "one can dispose of his property as he pleases, he cannot 'go

beyond the exercise of the right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.'" *Id.* at 15 (internal citation omitted). Indeed, the "Sherman Act was specifically intended to prohibit independent businesses from becoming 'associates' in a common plan which is bound to reduce their competitor's opportunity to buy or sell the things in which the groups compete." *Id.*

Additionally, the United States Supreme Court rejected the AP's argument that "since there are other news agencies which sell news, it is not a violation of the Act for an overwhelming majority of American publishers to combine to decline to sell their news to the minority." *Id.* at 17. The United States Supreme Court explained that "the fact that an agreement to restrain trade does not inhibit competition in all of the objects of that trade cannot save it from the condemnation of the Sherman Act." *Id.*

Finally, the United States Supreme Court rejected the AP's argument that applying the Sherman Act to the AP would be "an abridgement of the freedom of the press guaranteed by the First Amendment." *Id.* at 19. The United States Supreme Court explained that "freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not." *Id.* at 20. Indeed, the United States Supreme Court noted that the "First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary." *Id.* Applying the Sherman Act to the AP would ensure the "widest possible dissemination of information," which is consistent with the First Amendment. *Id.*

33. Should courts place significant weight on underlying First Amendment considerations when making antitrust determinations relating to the dissemination of information to the public, as the *Associated Press* majority suggests?

Response: In *Associated Press v. United States*, 326 U.S. 1 (1945), the United States Supreme Court held that the Associated Press ("AP"), a joint venture of over 1,200 newspapers, violated the Sherman Act by denying membership to newspapers that competed with existing AP members at the local level. The United States Supreme Court rejected the AP's argument that applying the Sherman Act to an "association of publishers constitutes an abridgment of the freedom of the press guaranteed by the First Amendment." *Id.* at 19. The United States Supreme Court explained that "freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not." *Id.* at 20. Indeed, the United States Supreme Court noted that the "First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary." *Id.* Applying the Sherman Act to the AP would ensure the "widest possible dissemination of information," which is consistent with the First Amendment. *Id.*

Accordingly, one interpretation of this portion of *Associated Press* is that if an antitrust defendant makes a First Amendment argument against the application of the antitrust laws, a court may take into account whether applying the antitrust laws would be

consistent with the goals of the First Amendment. I will fully and faithfully apply that precedent if the issue comes before me.

Senator Josh Hawley
Questions for the Record

Lucy Koh
Nominee, U.S. Circuit Judge for the Ninth Circuit

1. **The Supreme Court reversed or otherwise blocked at least three of your decisions in just six months. Are you aware of any other district court judges who have been reversed that often by the Supreme Court in such a short time? If so, list them.**

   Response: I am not aware of other district judges' reversal rates at the United States Supreme Court.

2. **The Supreme Court has recognized that the state has an interest in "protecting the potentiality of human life." *Roe v. Wade*, 410 U.S. 113. 162 (1973). Do you believe that this interest is legitimate?**

   Response: In *Roe v. Wade*, 410 U.S. 113 (1973), the United States Supreme Court recognized States' "important and legitimate interest in protecting the potentiality of human life." *Id.* at 162; *accord Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 871 (1992). As a United States District Judge, I am bound by and commit to following all United States Supreme Court and Ninth Circuit precedent and would continue to do so if confirmed to the Ninth Circuit.

3. **Please provide a detailed summary of the process that led to your nomination. Include the following details in particular:**

   a. **Who first raised the possibility of your nomination?**

   b. **Have you spoken with any interest groups, such as Demand Justice, concerning your nomination?**

   c. **How many conversations did you have with White House staff leading up to your nomination?**

   Response: On September 28, 2015, I sent a letter to the State Chair of Senator Feinstein's bipartisan Judicial Advisory Committee that expressed my interest in being considered for the opening on the Ninth Circuit. On October 12, 2015, I submitted my application to Senator Feinstein's State Chair. On October 30, 2015, I interviewed with Senator Feinstein's Judicial Advisory Committee. On January 6, 2016, an attorney from the White House Counsel's Office notified me that I would be considered for the Ninth Circuit opening. Beginning on January 6, 2016, I had contact with U.S. Department of Justice Office of Legal Policy attorneys and Senator Feinstein's Judiciary Committee staff. On February 18, 2016, I met with Senator Feinstein's Judiciary Committee staff and interviewed with attorneys from the White House Counsel's Office and the Department of

Justice. On February 25, 2016, President Obama submitted my nomination to the Senate. I had a confirmation hearing on July 13, 2016. On September 15, 2016, I was voted out of the Senate Judiciary Committee. My nomination was returned to President Obama on January 3, 2017.

On January 19, 2021, I submitted to the State Chair of Senator Feinstein's bipartisan Judicial Advisory Committee my application for any opening on the Ninth Circuit. I updated my application on March 16, 2021 and April 13, 2021.

On February 16, 2021, I submitted to the Statewide Chair of Senator Alex Padilla's bipartisan Judicial Evaluation Commission my application for any opening on the Ninth Circuit. I updated my application on April 15, 2021.

On May 28, 2021, an attorney from the White House Counsel's Office contacted me to confirm my interest in being considered for an opening on the Ninth Circuit. On June 7, 2021, an attorney from the White House Counsel's Office notified me that I would be considered for an opening on the Ninth Circuit. Since June 7, 2021, I have been in contact with attorneys from the Office of Legal Policy at the U.S. Department of Justice. On July 2, 2021, I was interviewed by Senator Padilla. On September 8, 2021, President Biden announced his intent to nominate me. On September 20, 2021, President Biden submitted my nomination to the Senate. I have not had conversations with interest groups, such as Demand Justice, concerning my nomination.

4. **In *Tandon* v. *Newsom*, 20A151 (2021), the Supreme Court said, "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" What do you understand this statement to mean?**

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the United States Supreme Court clarified that where a regulation treats comparable religious and secular activities differently, the regulation could only survive strict scrutiny's narrow tailoring requirement if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297.

5. **In *City of San Jose, California v. Trump*, 497 F. Supp. 3d 680 (N.D. Cal., 2020), you enjoined the Secretary of Commerce from speaking with the President about certain Census-related matters.**

   a. **Explain why you think your decision was consistent with the Opinions Clause in the Constitution?**

   b. **Does the Supreme Court's decision in *Trump* v. *New York*, 592 U.S. ___ (2020), change your view?**

Response: In *City of San Jose v. Trump*, 497 F. Supp. 3d 680 (N.D. Cal. 2020), the three-judge court considered statutory and constitutional challenges to a

Presidential Memorandum which made it the policy of the United States to exclude undocumented immigrants from the 2020 Census' congressional apportionment base. *Id.* at 698-99. The Presidential Memorandum directed the Secretary of Commerce to include, in his report of the "total population by States . . . as required for the apportionment of Representatives in Congress," 13 U.S.C. § 141(b), "information permitting the President" to exclude undocumented immigrants from the apportionment base. *City of San Jose*, 497 F. Supp. 3d at 698–99.

The three-judge court determined that the Presidential Memorandum was unlawful and that undocumented immigrants could not be excluded from the apportionment base. *See id.* at 729, 743. Accordingly, the three-judge court enjoined the Secretary of Commerce from including in his official report to the President any information about the number of undocumented immigrants in each state. *Id.* at 744-45.

The three-judge court held that the Opinions Clause of Article II did not require a different result. Under the Opinions Clause, the President "may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices." U.S. Const., Art. II, § 2, cl. 1. The three-judge court explained that prohibiting the Secretary of Commerce from including information about undocumented immigrants in the census report did not "keep the President from requesting information from the Secretary, including . . . the population by state excluding undocumented immigrants." *City of San Jose*, 497 F. Supp. 3d at 739. Instead, the injunction merely prevented the President from requiring the Secretary to alter the contents of the census report mandated by Congress. *Id.*

In *Trump v. New York*, 141 S. Ct. 530, 536-37 (2020), the United States Supreme Court held that challenges to the Presidential Memorandum were non-justiciable under the doctrines of standing and ripeness. The Court "express[ed] no view on the merits of the constitutional and related statutory claims presented." *Id.*

6. Do you believe the Ninth Circuit has authority to sit as an en banc court with all 29 active judges? If so, what standard would you apply when evaluating a party's request to assemble in that manner?

Response: Ninth Circuit Rule 35-3 states that "[i]n appropriate cases, the Court may order a rehearing by the full court following a rehearing or rehearing en banc." Ninth Circuit General Order 5.8 ("Rehearing by Full Court") sets out the procedure by which the full court (defined as "all active judges") would hear the case. Pursuant to Ninth Circuit G.O. 5.8(a)-(b), a party may file a timely petition "for a rehearing en banc before the full court" or a judge may make a sua sponte call within 7 days of the deadline to file the petition for rehearing en banc before the full court. Afterwards ordinary en banc rules and procedures govern. *Id.*

7. Explain your understanding of the holding of *Young v. Hawaii*, No. 12-17808 (2021), the history discussed in that case, and which of the competing narratives of the history you find to be more accurate.

Response: In *Young v. Hawaii*, 992 F.3d 765, 826 (9th Cir. 2021) (en banc), the Ninth Circuit upheld the state of Hawai'i's firearm licensing scheme. The Ninth Circuit held that the "government has the power to regulate arms in the public square" because such regulations are "laws restricting conduct that can be traced back to the founding era and are historically understood to fall outside of the Second Amendment's scope." *Id.* at 813 (cleaned up). As such, these regulations "may be upheld without further analysis." *Id.* (citation omitted).

In reaching this conclusion, the Ninth Circuit reviewed "more than 700 years of English and American legal history." *Id.* This history included: (1) "the English concept of the right to bear arms"; (2) colonial history which included "prohibitions on public carry" and "examples of colonial laws that not only permitted public carry, but mandated it"; and (3) post ratification history on public carry laws. *Id.* at 786-813.

This en banc decision is binding precedent. Moreover, a petition for certiorari review has been filed with the United States Supreme Court. It is not appropriate for me as a United States District Judge or as a circuit nominee to comment on the accuracy of this en banc precedent. I will continue to follow United States Supreme Court and Ninth Circuit precedent on these and all other issues.

8. Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."

a. Do you agree with that philosophy?

b. If not, do you think it is a violation of the judicial oath to hold that philosophy?

Response: I am not familiar with that statement or its context. The judicial oath requires that judges "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States." I do my level best to fulfill my judicial oath each and every day.

9. What is the standard for exercising each kind of abstention in the court to which you have been nominated?

Response: The *Pullman* abstention doctrine addresses the scenario in which a plaintiff brings a suit in federal court alleging both a federal constitutional claim and a state law claim. *See R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 498 (1941). If resolving the state law claim could resolve the entire case and the state law

issue is unclear, the federal court should abstain from deciding the case. *Id.* at 501. The Ninth Circuit has held that, "[p]ursuant to the *Pullman* abstention doctrine, federal courts have the power to refrain from hearing cases . . . in which the resolution of a federal constitutional question might be obviated if the state courts were given the opportunity to interpret ambiguous state law." *United States v. State Water Res. Control Bd.*, 988 F.3d 1194, 1209 (9th Cir. 2021) (internal citation omitted).

The *Burford* abstention doctrine provides that a federal court should abstain from exercising diversity jurisdiction over a state law claim that could affect a state's administration of an important policy. *Burford v. Sun Oil Co.*, 379 U.S. 315 (1943). In the Ninth Circuit, the *Burford* abstention doctrine applies if the party seeking to invoke the doctrine shows "(1) that the state has concentrated suits involving the local issue in a particular court; (2) the federal issues are not easily separable from complicated state law issues with which the state courts may have special competence; and (3) that federal review might disrupt state efforts to establish a coherent policy." *Tucker v. First Maryland Sav. & Loan, Inc.*, 942 F.2d 1401, 1405 (9th Cir. 1991).

The *Younger* abstention doctrine prohibits a federal court from enjoining certain pending state proceedings. *See Younger v. Harris*, 401 U.S. 37, 54 (1971). In the Ninth Circuit, the *Younger* abstention doctrine prohibits a federal court from enjoining "three categories of state proceedings: (1) ongoing state criminal prosecutions; (2) certain civil enforcement proceedings; and (3) civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." *Bristol-Myers Squibb Co. v. Connors*, 979 F.3d 732, 735 (9th Cir. 2020).

The *Colorado River* abstention doctrine addresses the scenario in which there are concurrent state and federal suits addressing the same subject matter. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Federal courts should not stay a case in that scenario unless the "clearest of justifications" shows that a stay would be in the interest of "[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Id.* at 818-19. In the Ninth Circuit, there are "eight factors to be considered in determining whether a Colorado River stay is appropriate: (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court." *United States v. State Water Res. Control Bd.*, 988 F.3d 1194, 1203 (9th Cir. 2021) (internal citation omitted).

The *Rooker-Feldman* doctrine prohibits federal courts from hearing "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The Ninth Circuit has "developed a two-part test to determine whether the *Rooker-Feldman* doctrine bars jurisdiction over a complaint filed in federal court": (1) "the federal complaint must assert that the plaintiff was injured by legal error or errors by the state court" and (2) "the federal complaint must seek relief from the state court judgment as the remedy." *Lundstrom v. Young*, 857 F. App'x 952, 955 (9th Cir. 2021) (internal citation omitted).

10. Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?

a. If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.

Response: I have never worked on a legal case or representation in which I opposed a party's religious liberty claim.

11. What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court conducted a textual analysis and considered contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the text of the Second Amendment at the time of ratification.

12. Do you consider legislative history when interpreting legal texts?

Response: If a federal statutory provision had been previously interpreted by the United States Supreme Court or the Ninth Circuit, that interpretation would be binding precedent. If there is no binding precedent, I first look at the statutory text. As the United States Supreme Court has repeatedly stated, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). I then look at the statutory scheme. "If the statutory language is unambiguous and 'the statutory scheme is coherent and consistent,'" then "the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). If the text is ambiguous or the statutory scheme is not coherent or consistent, then I use the tools of statutory construction, such as the canons of construction. I would look to precedent of the United States Supreme Court and Ninth Circuit interpreting related or analogous statutory provisions to discern which statutory construction tools to use. As a last resort, I would consider legislative history, but would do so with

caution. The United States Supreme Court has stated that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil*, 545 U.S. at 568.

a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?

Response: The United States Supreme Court has held that legislative history may "shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil*, 545 U.S. at 568. In *Garcia v. United States*, the United States Supreme Court reiterated that "the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'" 469 U.S. 70, 76 (1984) (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969)). Moreover, the United States Supreme Court has held that "[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended." *Russello v. United States*, 464 U.S. 23-24 (1983).

The United States Supreme Court has cautioned that legislative history may give "unrepresentative committee members—or, worse yet, unelected staffers and lobbyists—both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text." *Exxon Mobil*, 545 U.S. at 568. Thus, the United States Supreme Court has "eschewed reliance on the passing comments of one Member and casual statements from the floor debates." *Garcia*, 469 U.S. at 76 (citation omitted).

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court looked to the English common law prior to ratification when interpreting the ordinary public meaning of the Second Amendment.

13. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: The United States Supreme Court has held that, to prove that an execution violates the Eighth Amendment's prohibition on cruel and unusual punishment, a prisoner must make several showings. The prisoner must show that there is "a 'substantial risk of harm,' an 'objectively intolerable risk of harm' that prevents prison officials from pleading that they were 'subjectively blameless for the purposes of the Eighth Amendment.'" *Baze v. Rees*, 553 U.S. 35, 50 (2008) (quoting *Farmer*

v. Brennan, 511 U.S. 825, 842 (1994)). To show this "objectively intolerable risk of harm," the United States Supreme Court has clarified that "prisoners must identify an alternative" to the default method of execution "that is 'feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain.'" *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze*, 553 U.S. at 52). The United States Supreme Court has also stated that "[s]ome risk of pain is inherent in any method of execution," so "the Constitution does not demand the avoidance of all risk of pain in carrying out executions." *Baze*, 553 U.S. 47. The United States Supreme Court has further clarified that only those methods of executions that "cruelly superadds pain to the death sentence" are inconsistent with the original meaning of the Eighth Amendment. *Bucklew v. Precythe*, 139 S. Ct. 1112, 1123-24 (2019). The Ninth Circuit is bound to apply the standards set forth by the United States Supreme Court. *See e.g., Lopez v. Brewer*, 680 F.3d 1068, 1073 (9th Cir. 2012) (citing *Baze*, 553 U.S. at 50).

14. Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?

Response: Important context for this response is in my response to Question 13. More specifically, I add that under the United States Supreme Court's precedent in *Glossip v. Gross*, 576 U.S. 863, 880 (2015), a petitioner prisoner is required to "plead and prove a known and available alternative" to the method of execution he is challenging. After proving that there is a "known and available alternative method," the United States Supreme Court held that the petitioner prisoner must establish that alternative method of execution significantly reduces a substantial risk of severe pain. *Id.* at 877.

15. Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?

Response: In *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 67-74 (2009), the United States Supreme Court held that there was no due process right (procedural or substantive) to access DNA evidence for a habeas petitioner.

16. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?

Response: No.

17. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: In *Employment Division, Department of Human Resources of Oregon v. Smith*, the United States Supreme Court held that a law which incidentally burdens religion ordinarily is not subject to strict scrutiny under the Free Exercise Clause if the law is neutral and generally applicable. 494 U.S. 872, 878-82 (1990). If a law is neutral and generally applicable, rational basis scrutiny applies. *Id.*

Determining whether a law is neutral and generally applicable requires a two-part analysis. In turn, each part requires two steps.

First, a court must determine whether a law is neutral. That determination requires two steps. The first step asks whether the law is facially neutral. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S 520, 533-34 (1993). If the law is not facially neutral, the law is subject to strict scrutiny. *Id.* If the law is facially neutral, then the court must proceed to the second step. *Id.* at 534 ("Facial neutrality is not determinative.").

The second step asks whether the facially neutral law's enactment or enforcement was motivated by religious animus on the part of the governmental actor. A facially neutral law whose enactment or enforcement was motivated by religious animus is subject to strict scrutiny. Courts must review the record to determine whether there is any evidence of religious animus. *Lukumi*, 508 U.S. at 534-42 (facially neutral city ordinances were non-neutral because they were prompted by concern for Santeria religious practices). In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the United States Supreme Court held that the government's application of a facially neutral public accommodations law violated the Free Exercise Clause because hostile statements by officials in public meetings showed that the application of the law was motivated by religious animus. *Id.* at 1729-31 (2018) (finding open expressions of hostility by state civil rights commissioners sufficient to show animus).

Second, a court must determine whether a law is generally applicable. That determination also requires two steps. The first step asks whether any exemptions to the law invite "the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). If the law makes such an invitation, the law is not generally applicable and is subject to strict scrutiny. If the law does not make such an invitation, then the court must proceed to the second step.

The second step asks whether the law is overbroad and underinclusive such that it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 141 S. Ct. at 1877. To

determine whether a restriction is overbroad and underinclusive, courts must compare religious conduct with comparable secular conduct. *See Lukumi*, 508 U.S. at 544-45. In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the United States Supreme Court clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* at 1296. "Comparability is concerned with the risks various activities pose, not the reasons why people gather" to engage in those activities. *Id.*

In *Tandon,* the United States Supreme Court also clarified 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." *Id.* "It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

However, not every application of "a valid and neutral law of generally applicability is necessarily constitutional under the Free Exercise Clause." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 n.2 (2017). For example, the United States Supreme Court has found a ministerial exception to Title VII employment discrimination laws. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) (holding that Title VII's prohibition on employment discrimination does not apply to churches when they hire or fire ministers); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) (precluding two lay teachers who instructed students in religious studies and prepared students for participation in Church services from pursuing Title VII employment discrimination suits against religious schools).

18. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Please see my response to Question 17.

19. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: A religious belief is "sincere" if it is not "obviously" a "sham" or an "absurdit[y]." *Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir. 1981). If a belief is sincere, a court may not inquire into the "truth or verity" of the belief. *United States v. Ballard*, 322 U.S. 78 (1944); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (emphasizing that "it is not for [the court] to say that [plaintiffs'] religious beliefs are mistaken or insubstantial. Instead, [the court's] 'narrow function . . . in this context is to determine' whether the line drawn reflects 'an honest conviction'" (citation omitted)). Sincere religious beliefs "need not be confined in either source or content to traditional or parochial concepts of religion" and can include beliefs held only by a single person. *Welsh v. United States*, 398 U.S. 333, 340 (1970). Indeed, even atheism can count as a sincerely held belief. *Torcaso v. Watkins*, 367 U.S. 488, 490 (1961).

20. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court held that the Second Amendment guarantees "the individual right to possess and carry weapons in case of confrontation," regardless of the individual's participation in a "well regulated Militia." *Id.* at 592.

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

21. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: In his dissent, Justice Holmes explained that "a Constitution is not intended to embody a particular economic theory." *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). I believe that the above quoted statement indicates Justice Holmes's belief that the Fourteenth Amendment did not enact the specific economic view set out in the *Lochner* majority opinion. *See Lochner*, 198 U.S. at 64 ("[T]he freedom of master and employee to contract with each other in relation to their employment, and in

defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution.").

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: As a United States District Judge, I am bound to follow binding United States Supreme Court precedent. My understanding is that much of *Lochner* was abrogated by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 392 (1937) ("There is no absolute freedom to do as one wills or to contract as one chooses.").

22. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: The United States Supreme Court has held that when it reexamines a prior holding, "its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 854 (1992). Specifically, the United States Supreme Court considers whether its ruling "has proven to be intolerable simply in defying practical workability, whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation, whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine, or whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification." *Id.* at 854-55 (internal citations omitted). More recently, the United States Supreme Court has also considered the quality of the reasoning of a prior ruling in deciding whether to overrule the prior ruling. *Janus v. AFSCME*, 138 S. Ct. 2448, 2478-79 (2018).

23. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

a. If so, what are they?

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: I commit to faithfully applying all binding United States Supreme Court precedents. Any personal views are not relevant to my judicial decision-making.

24. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

b. If not, please explain why you disagree with Judge Learned Hand.

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: In *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992), the United States Supreme Court held that evidence that a defendant holds more than 80% share of the product market "with no readily available substitutes" is sufficient to support a finding of monopoly power. *Kodak* also cited United States Supreme Court precedent for the proposition that "over two-thirds of the market is a monopoly." *Id.* (citing *American Tobacco Co. v. United States*, 328 U.S. 781, 797 (1946)). Applying these precedents, the Ninth Circuit has concluded that a "65% market share" typically "establishes a prima facie case of market power." *See Image Tech. Servs., Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1206 (9th Cir. 1997). By contrast, "numerous cases hold that a market share of less than 50 percent is presumptively insufficient to establish market power." *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir. 1995). However, the Ninth Circuit also has held that a company with less than 50% market share may have monopoly power if "entry barriers are high and competitors are unable to expand their output in response to supracompetitive pricing." *Id.* at 438 n.10. I will follow United States Supreme Court and Ninth Circuit precedent. Any personal views on the opinion of Judge Learned Hand of the Second Circuit are not relevant to my judicial decision-making.

25. Please describe your understanding of the "federal common law."

Response: In *Rodriguez v. Fed. Deposit Ins. Corp.*, 140 S. Ct. 713, 717 (2020), the United States Supreme Court explained that "federal common law plays a necessarily modest role," comprised of "only limited areas . . . in which federal judges may appropriately craft the rule of decision" such as "admiralty disputes, and certain controversies between States." The United States Supreme Court emphasized that to "claim a new area for common lawmaking, strict conditions must be satisfied" including "one of the most basic: In the absence of congressional authorization,

common lawmaking must be 'necessary to protect uniquely federal interests.'" *Id.* (quoting *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981)).

26. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

a. Do you believe that identical texts should be interpreted identically?

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Generally, the interpretation of a state constitutional provision is a matter of state law. Federal courts must defer to the decisions of the highest court in the state whose constitution the federal court is interpreting. *See Erie R.R. Co. v. Tomkins*, 304 U.S. 64, 78 (1938) ("Except in matters governed by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.").

The United States Constitution is "the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI cl. 2. This clause means that protections granted by the United States Constitution are binding on states, "notwithstanding" what a state's constitution provides.

27. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954), was correctly decided?

Response: I follow all United States Supreme Court precedent. As a United States District Judge, it is improper for me to comment on any issues that may come before me. However, it is unlikely that de jure racial segregation in schools would be reimposed in the United States, so like prior judicial nominees, I can state that I believe *Brown v. Board of Education* was correctly decided.

28. Do federal courts have the legal authority to issue nationwide injunctions?

a. If so, what is the source of that authority?

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: The United States Supreme Court has noted that an "injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). However, the United States Supreme Court has upheld nationwide injunctions granted by federal courts when those injunctions are necessary to grant relief to the parties. *See Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2088-89 (2017) (upholding portion of preliminary injunction with respect to parties and nonparties similarly situated). Nationwide injunctions reflect the principle that 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).

29. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my response to Question 28.

30. What is your understanding of the role of federalism in our constitutional system?

Response: The United States Supreme Court has explained that the "federal system established by our Constitution preserves the status of the States in two ways." *Alden v. Maine*, 527 U.S. 706, 714 (1999). "First, it reserves to them a substantial portion of the Nation's primary sovereignty, together with the dignity and essential attributes inhering in that status." *Id.* "Second, even as to matters within the competence of the National Government, the constitutional design secures the founding generation's rejection of the concept of a central government that would act upon and through the States in favor of a system in which the State and Federal Governments would exercise concurrent authority over the people—who were, in Hamilton's words, the only proper objects of government." *Id.*

This system was designed for "the protection of individuals." *New York v. United States*, 505 U.S. 144, 181 (1992). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

31. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my response to Question 9.

32. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: The United States Supreme Court has stated that injunctive relief is most appropriate when there is "irreparable injury and inadequacy of legal remedies," including damages. *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987). However, injunctions are also "extraordinary remed[ies]" through which the court directs the conduct of a party "with the full backing of its coercive powers." *Nken v. Holder*, 556 U.S. 418, 428 (2009).

33. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: In *Washington v. Glucksberg*, 117 S.Ct. 2258, 2268 (1997), the United States Supreme Court held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and are "implicit in the concept of ordered liberty." (internal quotation marks omitted). In *Glucksberg*, the United States Supreme Court recognized that the "liberty" protected by the Due Process Clause includes 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 (1925), *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *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 Pa. v. Casey*, 505 U.S. 833 (1992). The United States Supreme Court in *Glucksberg* also noted that it "assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment." *Glucksberg*, 521 U.S. 720 (citing *Cruzan v. Missouri Dep't of Health*, 497 U.S. 261, 278–279 (1990)). After *Glucksberg*, the United States Supreme Court has also articulated a right to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999), and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

34. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: Please see my response to Question 17.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: The United States Supreme Court has not identified the difference in meaning, if any, between the two. For example, in *Lee v. Weisman*, the

United States Supreme Court referred to the right protected by the Free Exercise Clause in the First Amendment as the "freedom of worship." 505 U.S. 577, 591 (1992); *see also West Virginia State Board of Ed. v. Barnette*, 319 U.S. 624, 638 (1943) (listing the relevant rights as "free speech, a free press, freedom of worship and assembly"). Conversely, in *McDaniel v. Paty*, the United States Supreme Court discussed the First Amendment right as "the right to the free exercise of religion." 435 U.S. 618, 620 (1978); *see also Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012, 2019-20 (discussing a Free Exercise claim as whether denial of a generally available benefit "imposes a penalty on the free exercise of religion").

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: Please see my response to Question 17.

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: Please see my response to Question 19.

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The United States Supreme Court has explained that the Religious Freedom Restoration Act (RFRA) "applies to all Federal law, and the implementation of that law, whether statutory or otherwise. RFRA also permits Congress to exclude statutes from RFRA's protections." *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020).

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: On October 14, 2021 I ran a Westlaw search for the cases requested above. The following cases appear responsive to the request. *See Smith v. Cruzen*, Nos. 14-CV-4791-LHK (PR), 15-CV-1739 LHK (PR), 15-CV-1891 LHK (PR), 15-CV-2025 LHK (PR), 15-CV-2041 LHK (PR), 15-CV-2017 LHK (PR), 15-CV-2121 LHK (PR), 15-CV-2122 LHK (PR), 15-CV-2205 LHK (PR), 15-CV-2487 LHK (PR), 2017 WL 7343445 (N.D. Cal.

May 2, 2017); *Smith v. Cruzen*, No. 14-CV-04791 LHK (PR), 2017 WL 4865565 (N.D. Cal. Oct. 26, 2017); *Rice v. Ramsey*, No. C 09–1496 LHK (PR), 2012 WL 4177438 (N.D. Cal. Sept. 19, 2012); *Rice v. Curry*, No. C 09–1496 LHK (PR), 2012 WL 4902829 (N.D. Cal. Oct. 12, 2012); *Saif'ullah v. Cruzen*, No. 15-CV-01739 LHK (PR), 2017 WL 4865601 (N.D. Cal. Oct. 26, 2017); *Saif'ullah v. Albritton*, No. 15-CV-05600 LHK (PR), 2017 WL 6558719 (N.D. Cal. Oct. 26, 2017); *Roe v. San Jose Unified School District Board*, No. 20-CV-02798-LHK, 2021 WL 292035 (N.D. Cal. Jan. 28, 2021); *France v. Noll*, No. C 09–4652 LHK (PR), 2011 WL 2149093 (N.D. Cal. May 31, 2011); *Chaparro v. Ducart*, No. C 14-4955 LHK (PR), 2016 WL 491635 (N.D. Cal. Feb. 9, 2016); *Art of Living Foundation v. Does 1-10*, No. 5:10–cv–05022–LHK, 2012 WL 1565281 (N.D. Cal. May 1, 2012); *Singleton v. Volunteers of America*, No. C 12-5399 LHK (PR), 2013 WL 5934647 (N.D. Cal. Nov. 4, 2013); *Hill v. Dept' of Justice*, No. C 12–5008 LHK (PR), 2013 WL 489680 (N.D. Cal. Feb. 7, 2013); *Baker v. Lewis*, No. C 11–3493 LHK (PR), 2012 WL 1932867 (N.D. Cal. May 29, 2012); and *Tandon v. Newsom*, 517 F. Supp. 3d 922 (N.D. Cal. 2021).

35. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: The United States Supreme Court has indicated that "an effort to fix some general, numerically precise degree of certainty" to other standards "may not be helpful." *See Illinois v. Gates*, 462 U.S. 213, 235 (1983) (refusing to assign a numerical value to "probable cause"). In general, "proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty." Ninth Circuit Jury Instructions Committee, Manual of Model Criminal Jury Instructions for the District Courts of the Ninth Circuit 46 (2021). "A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation." *Id.*

36. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by

definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

c. If you disagree with either of these statements, please explain why and provide examples.

Response: The United States Supreme Court has explained that "[i]t is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by this Court." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009)). Thus, a "federal court may grant habeas relief only if a state court violated '*clearly established* Federal law, as determined by *the Supreme Court* of the United States.'" *Dunn v. Reeves*, 141 S. Ct. 2405, 2410-11 (2021) (emphasis in original). "This 'wide latitude' means that federal courts can correct only 'extreme malfunctions in the state criminal justice system.' And in reviewing the work of their peers, federal judges must begin with the 'presumption that state courts know and follow the law.'" *Id.* (cleaned up). I would follow United States Supreme Court precedent, and any personal views are irrelevant to my judicial decision-making.

37. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

c. If confirmed, would you treat unpublished decisions as precedential?

d. If not, how is this consistent with the rule of law?

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: The Ninth Circuit Rules establish the framework for publication of opinions versus unpublished dispositions of the Court. *See* Circuit Rules 36-1, 36-2, 36-3. For example, Ninth Circuit Rule 36-3(a) states that "[u]npublished dispositions and orders of this Court are not precedent, except when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion." However, unpublished dispositions and orders issued on or after January 1, 2007 may still be cited in the Ninth Circuit, consistent with Federal Rule of Appellate Procedure 32.1. Furthermore, pursuant to Circuit Rule 36-4, the parties may seek publication of an unpublished disposition, and if such a request is granted, the disposition "will be redesignated an opinion." If confirmed, I would follow the Ninth Circuit Rules and the Federal Rules of Appellate Procedure.

38. In your legal career:

a. How many cases have you tried as first chair?

b. How many have you tried as second chair?

c. How many depositions have you taken?

d. How many depositions have you defended?

e. How many cases have you argued before a federal appellate court?

f. How many cases have you argued before a state appellate court?

g. How many times have you appeared before a federal agency, and in what capacity?

h. How many dispositive motions have you argued before trial courts?

i. How many evidentiary motions have you argued before trial courts?

Responses: As a lawyer, I have tried three cases by myself and four cases with co-counsel with whom I evenly divided the witnesses and arguments. As a lawyer, I drafted for one of my trials a jury instruction, which was adopted as the Ninth Circuit Model Criminal Jury Instruction for Scheme to Defraud—Vicarious Liability. I have briefed more than a dozen appeals. I have argued before the Ninth Circuit once. To the best of my recollection, I have defended about a dozen depositions and taken less than a half dozen depositions. I have litigated patent cases before the United States International Trade Commission. I have argued many evidentiary and dispositive motions in trial courts. As a state and federal trial judge, I have tried 271 cases.

When I worked for the United States Senate Judiciary Committee and the United States Department of Justice Office of the Deputy Attorney General and Office of Legislative Affairs, I did not engage in litigation.

39. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

b. What portion of these were dedicated to pro bono work?

Response: To the best of my recollection, I billed approximately 2,400 to 2,900 hours per year. I cannot recall what portion was dedicated to pro bono work. I did not bill my time doing community service work.

40. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: I understand this quote to mean that judges should impartially and faithfully discharge their duties without consideration of their personal opinions as to the results. I do my level best to fulfill my judicial oath to impartially and faithfully discharge my duties each and every day.

41. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

b. Do you agree or disagree with this statement?

Response: I understand this quote to mean that the legislative and executive branches of government enact laws and that the role of the judicial branch of government is limited to impartially and faithfully applying those laws. I do my level best to fulfill my judicial oath to impartially and faithfully discharge my duties each and every day.

42. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: I understand this quote to mean that judges should impartially and faithfully discharge their duties without consideration of their personal

opinions as to the results. I do my level best to fulfill my judicial oath to impartially and faithfully discharge my duties each and every day.

43. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

a. If yes, please provide appropriate citations.

Response: To the best of my recollection, I have never taken a position in litigation or in a publication that a federal or state statute was unconstitutional.

44. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: No.

45. What were the last three books you read?

Response: Alexe Van Buren & Dixie Grimes, THE B.T.C. OLD-FASHIONED GROCERY COOKBOOK (2014); Colin Woodward, AMERICAN NATIONS: A HISTORY OF THE ELEVEN RIVAL REGIONAL CULTURES OF NORTH AMERICA (2011); Michelle Zauner, CRYING IN H MART (2021).

46. Do you believe America is a systemically racist country?

Response: As a California Superior Court and United States District Judge for nearly 14 years, I adjudicate cases raising specific claims of discrimination. These cases require me to determine such issues as whether a claim has been stated, whether administrative remedies have been exhausted, and whether statutes of limitations bar a claim. I also decide whether there is a factual material dispute such that the case should proceed to trial. The juries decide whether the law has been violated, and if so, what the remedy should be. I have no frame of reference or mechanism to judge whether an entire nation is racist and have never had that issue come before me.

47. What case or legal representation are you most proud of?

Response: As a lawyer, I drafted for one of my trials a jury instruction, which was adopted as the Ninth Circuit Model Criminal Jury Instruction for Scheme to Defraud—Vicarious Liability.

48. Have you ever taken a position in litigation that conflicted with your personal views?

a. How did you handle the situation?

b. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: To the best of my recollection, I believe I have. I fulfilled my duty to zealously advocate on behalf of my client and made good faith, legally supported arguments. As a United States District Judge, I apply the law as written regardless of my personal beliefs and would continue to do so if confirmed as a circuit judge.

49. What three law professors' works do you read most often?

Response: In my work as a United States District Judge, I rely on primary sources such as state and federal constitutions, statutes, regulations, and case law. I rarely rely on treatises or law review articles. I do not regularly read treatises or law review articles, so I do not have any law professors whose work I read most often.

50. Which of the Federalist Papers has most shaped your views of the law?

Response: Federalist No. 78 sets forth the establishment, role, and independence of the judiciary in safeguarding the Constitution relative to legislative power.

51. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: I have read many judicial opinions that have been persuasively written. I do not regularly read law review articles or treatises.

52. Do you believe that an unborn child is a human being?

Response: As a United States District Judge, it is not appropriate for me to respond to this question because it may create the impression that I have prejudged a future case that may come before me and raise this question.

53. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: To the best of my recollection, I have testified under oath four times. First, about 30 years ago, a law school classmate came to my home the morning after a party at which she asserted that she had been raped. I accompanied her to the police station that day and ultimately testified before the grand jury and at trial in *Commonwealth v. David Nolan,* MICR 1993-01056, Middlesex Superior Court. Second, I testified at my February 11, 2010 hearing on my nomination to the United

States District Court for the Northern District of California. Third, I testified at my July 13, 2016 hearing on my nomination to the Ninth Circuit. Fourth, I testified at my October 6, 2021 hearing on my nomination to the Ninth Circuit.

54. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade*, 410 U.S. 113 (1973)?

b. The Supreme Court's substantive due process precedents?

c. Systemic racism?

d. Critical race theory?

Response: No.

55. Do you currently hold any shares in the following companies:

a. Apple?

b. Amazon?

c. Google?

d. Facebook?

e. Twitter?

Response: No. My husband and I invest only in mutual funds and do not own any individual stocks.

56. Have you ever authored or edited a brief that was filed in court without your name on the brief?

a. If so, please identify those cases with appropriate citation.

Response: To the best of my recollection, I have not authored or edited a brief that was filed in court without my name on the brief.

57. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: To the best of my recollection, no.

58. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: All nominees take the oath before they testify at their confirmation hearing to provide truthful information, so that the United States Senate can fulfill its advice and consent role under the Constitution.

Senator Mike Lee

Questions for the Record

Judge Lucy Haeran Koh, Nominee to the Ninth Circuit Court of Appeals

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

   Response: Both are undesirable outcomes that judges should strive to avoid.

2. **From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?**

   Response: I am not aware of the change in the number of statutes struck down as unconstitutional by the United States Supreme Court over time. United States citizens have a constitutionally protected right to "petition the Government for a redress of grievances." U.S. Const. Amend. I. All judges must fulfill their judicial oaths to "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States."

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

   Response: I understand the term "judicial review" to mean that the judicial branch has the ability to review the legality of legislative and executive actions. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (declaring the Judiciary Act of 1789 unconstitutional). The term "judicial supremacy" appears to have multiple definitions, and I have never used it as a lawyer or as a judge. The term may refer to the view that the only branch of the federal government that has "[t]he power to interpret the Constitution in a case or controversy" is the judiciary. *See City of Boerne v. Flores*, 521 U.S. 507, 524 (1997). The term may also refer to the idea of the court's exceeding its own constitutionally granted authority. *See, e.g.*, *Obergefell v. Hodges*, 576 U.S. 644, 708 (2015) (Roberts, C.J., dissenting).

4. **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: Pursuant to Article VI of the Constitution, federal and state legislators, executive officers, and judicial officers are bound by oath to support the Constitution. Moreover, state legislators and executive and judicial officers are bound to follow decisions of the United States Supreme Court interpreting the Constitution. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.").

5. **In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.**

Response: In *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), the United States Supreme Court stated: "It is emphatically the province and duty of the judicial department to say what the law is." Unlike the legislative and executive branches of government, the courts' role is limited to interpreting what the law is in cases or controversies as set forth in Article III of the Constitution.

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

Response: My judicial philosophy is to fulfill my judicial oath, which requires that I "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon me" under the Constitution and laws of the United States. This requires that I understand the limited role of the judiciary, which is to carefully consider the facts in the record and apply the law faithfully and impartially in deciding the limited issues before me. I also consider all of the parties' arguments and strive to issue timely orders that clearly and comprehensively state my reasoning.

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

Response: If a federal statutory provision had been previously interpreted by the United States Supreme Court or the Ninth Circuit, that interpretation would be binding precedent. If there is no binding precedent, I first look at the statutory text. As the United States Supreme Court has repeatedly stated, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). I then look at the statutory scheme. "If the statutory language is unambiguous and 'the statutory scheme is coherent

and consistent,'" then "the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). If the text is ambiguous or the statutory scheme is not coherent or consistent, then I use the tools of statutory construction, such as the canons of construction. I would look to precedent of the United States Supreme Court and Ninth Circuit interpreting related or analogous statutory provisions to discern which statutory construction tools to use. As a last resort, I would consider legislative history, but would do so with caution. The United States Supreme Court has stated that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil*, 545 U.S. at 568.

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

Response: Please see my response to Question 7.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court conducted a textual analysis and considered contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the text at the time of ratification.

10. **How would you describe your approach to reading statutes – how much weight do you give to the plain meaning of the text? When we talk about the plain meaning of a statute, are we talking about the public understanding at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: If a federal statutory provision had been previously interpreted by the United States Supreme Court or the Ninth Circuit, that interpretation would be binding precedent. If there is no binding precedent, I first look at the statutory text. As the United States Supreme Court has repeatedly stated, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). I then look at the statutory scheme. "If the statutory language is unambiguous and 'the statutory scheme is coherent and consistent,'" then "the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). If the text is ambiguous or the statutory scheme is not coherent or consistent, then I use the tools of statutory construction, such as the canons of construction. I would look to precedent of the United States Supreme Court and Ninth Circuit interpreting related or analogous statutory provisions to discern which statutory construction tools to use. As a last resort, I would consider legislative history, but would do so with caution. The United States Supreme Court has stated that

"legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil*, 545 U.S. at 568.

In *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738 (2020), the United States Supreme Court stated that: "This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court conducted a textual analysis and considered contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the text of the Second Amendment at the time of ratification.

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

Response: The doctrine of standing enforces Article III's requirement that federal courts adjudicate only "genuine, live dispute[s] between adverse parties." *Carney v. Adams*, 141 S. Ct. 493, 498 (2020). To satisfy "the 'irreducible constitutional minimum' of standing," a "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 v. Robins*, 136 S. Ct. 1540, 1547 (2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

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

Response: The Necessary and Proper Clause grants Congress the power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Art. I, § 8, cl. 18. In *M'Culloch v. Maryland*, 17 U.S. 316, 436-37 (1819), the United States Supreme Court held that Congress has implied powers derived from the Necessary and Proper Clause. Specifically, the United States Supreme Court stated: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Id.* at 421.

13. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: The United States Supreme Court has instructed that "the 'question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.'" *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (quoting *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948)). Thus, a court should not automatically strike down the law "because Congress used the wrong

labels" or failed to identify the source of its authority. *Id.* at 569-70. However, a court must consider whether a law is within the scope of Congress's enumerated powers, regardless of whether Congress specifically referred to any power. *Id.* at 570. Any exercise of Congressional authority may not violate other provisions of the Constitution. *See, e.g.*, *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) (holding portions of Congressional statute regulating internet transmission of obscene or indecent messages to minors violated the First Amendment).

14. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: In *Washington v. Glucksberg*, 117 S. Ct. 2258, 2268 (1997), the United States Supreme Court held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and are "implicit in the concept of ordered liberty." (internal quotation marks omitted). In *Glucksberg*, the United States Supreme Court recognized that the "liberty" protected by the Due Process Clause includes 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 (1925), *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *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 Pa. v. Casey*, 505 U.S. 833 (1992). The United States Supreme Court in *Glucksberg* also noted that it "assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment." *Glucksberg*, 521 U.S. 720 (citing *Cruzan v. Missouri Dep't of Health*, 497 U.S. 261, 278-79 (1990)). After *Glucksberg*, the United States Supreme Court has also articulated a right to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999), and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

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

Response: Please see my response to Question 14.

16. **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 Questions 14 and 15 are based on my understanding of United States Supreme Court precedent and not on personal beliefs. I faithfully follow all United States Supreme Court precedent regardless of any personal beliefs I may have.

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

Response: The Commerce Clause of Article I grants Congress the authority to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, § 8, cl. 3. The United States Supreme Court has "read that to mean that Congress may regulate 'the channels of interstate commerce,' 'persons or things in interstate commerce,' and 'those activities that substantially affect interstate commerce.'" *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012) (citing *United States v. Morrison*, 529 U.S. 598, 618-19 (2000)). However, Congress may not use the Commerce Clause to "compel[] individuals to become active in commerce by purchasing a product." *Id.* at 552. In other words, Congress may not regulate "inaction." *Id.*

18. **What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?**

Response: A group of people is a "suspect class" if the group has "the traditional indicia of suspectedness." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974). Under this standard, the United States Supreme Court has explained that a group is a "suspect class" if it has an "immutable characteristic determined solely by the accident of birth" or if it is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Id.* For example, a group of people classified by race, religion, national origin, or alienage is a suspect class. *See, e.g.*, *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Graham v. Richardson*, 403 U.S. 365, 371-32 (1971).

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

Response: In *Seila Law v. CFPB*, the United States Supreme Court stated: "The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty. Their solution to governmental power and its perils was simple: divide it." 140 S. Ct. 2183, 2202 (2020) (citation omitted). The United States Supreme Court has emphasized that "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as 'a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.'" *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (quoting *Buckley v. Valeo*, 424 U.S. 1, 122 (1976)).

20. **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 Constitution's text and structure, as well as precedent and history bearing on the question." *Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015). For example, in the context of "claims of Presidential power," the United States Supreme Court applies "Justice Jackson's familiar tripartite framework from" *Youngstown*. *See id.*

(citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring)). Under this framework, the exercise of executive power is divided into three categories: (1) "when 'the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate"; (2) "'in absence of either a congressional grant or denial of authority' there is a 'zone of twilight in which he and Congress may have concurrent authority,' and where 'congressional inertia, indifference or quiescence may' invite the exercise of executive power"; and (3) "when 'the President takes measures incompatible with the expressed or implied will of Congress . . . he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.'" *Id.* (quoting *Youngstown*, 343 U.S. at 635-37). For the President to succeed in the last category, the executive authority must be "both 'exclusive' and 'conclusive' on the issue." *Id.* (quoting *Youngstown*, 343 U.S. at 637-38).

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

Response: Empathy should play no role in deciding the outcome of a case. A judge must decide cases based on the law and the facts alone. However, judges should treat parties and counsel with dignity and respect.

22. **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 this definition from the Biden Administration. If a case involving the definition of "equity" came before me, I would look to United States Supreme Court and Ninth Circuit precedent to define it. My personal views are irrelevant to my judicial decision-making.

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

Response: Black's Law Dictionary defines "equity" as "fairness; impartiality; evenhanded dealing" and the "body of principles constituting what is fair and right; natural law." Black's Law Dictionary defines "equality" as the "quality, state, or condition of being equal; esp., likeness in power or political status."

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

Response: I am not aware of any consensus definition of this term, and I do not have a personal definition of this term.

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

Response: 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."

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

Response: Please see my responses to Questions 24 and 25.

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

Response: If this issue came before me, I would apply United States Supreme Court and Ninth Circuit precedent on the Equal Protection Clause.

28. **You stated in *Tandon v. Newsom* that "as Plaintiffs concede, the right to earn a living is not a fundamental liberty interest that has been traditionally protected by the substantive component of the Due Process Clause."[1] Please explain what you mean by this.**

Response: "Neither the United States Supreme Court nor the Ninth Circuit 'has []ever held that the right to pursue work is a fundamental right.'" *Tandon v. Newsom*, 517 F. Supp. 3d 922, 949 (N.D. Cal. 2021) (quoting *Sagana v. Tenorio*, 384 F.3d 731, 743 (9th Cir. 2004)). "Rather, the Ninth Circuit has held that the right to pursue one's profession is not a fundamental right protected by the Due Process Clause." *Id.* (*Franceschi v. Yee*, 887 F.3d 927, 937 (9th Cir. 2018)). Under Ninth Circuit precedent, "[s]ubstantive due process has . . . been largely confined to protecting fundamental liberty interests such as marriage, procreation, contraception, family relationships, child rearing, education and a person's bodily integrity, which are 'deeply rooted in this Nation's history and tradition.'" *Id.* (quoting *Franceschi*, 887 F.3d at 937) (internal quotation marks omitted).

29. **In your order you distinguished the *Tandon* case from others like *Roman Catholic Diocese of Brooklyn v. Cuomo* and *South Bay United Pentecostal Church v. Newsom*, by essentially saying that houses of worship could not be restricted, while private gatherings for religious purposes could be. Can you elaborate on that distinction? Does the right to free exercise exist only in houses of worship?**

[1] *Id.* at 949.

a. **Again, if individuals are allowed to gather in groups larger than three households for other purposes, why can they be banned from doing so for religious purposes?**

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the United States Supreme Court clarified 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." The Court explained that "[i]t is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon*, the United States Supreme Court also clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* "Comparability is concerned with the risks various activities pose, not the reasons why people gather" to engage in those activities. *Id.*

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than secular activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

30. **In 2017, you heard the case *Federal Trade Commission v. Qualcomm*, in which the FTC argued that Qualcomm was using anti-competitive policies in supplying cell phone chips to companies like Apple. Your decision broadened the market to include the entire market for cellular services, included a global injunction against Qualcomm, required the company to renegotiate all its chip contracts with smartphone makers, and imposed seven years of compliance monitoring on the company. The Ninth Circuit stayed this decision and called it "an improper excursion beyond the outer limits of the Sherman Act." This is just one of many examples where a higher court has overturned one of your decisions, which is concerning.**

a. **Now that you are being considered for a position on a higher court, what assurance can you offer that you will base your decisions on the text of existing statutes and Supreme Court precedent?**

Response: I will fulfill my judicial oath, which requires that I "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon me" under the Constitution and laws of the United States. This requires that I understand the limited role of the judiciary, which is to carefully consider the facts in the record and apply the law faithfully and impartially in deciding the limited issues before me.

Questions for the Record from
Senator Thom Tillis for
Lucy Haeran Koh,
Nominee to be U.S. Circuit Judge for the Ninth Circuit

Judicial Philosophy and Judicial Management

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 means a lot of different things to different people. I define judicial activism as a judge who disregards precedent to achieve some personal policy objective or result. It is not appropriate. It undermines the rule of law and faith in our system of justice. Judges must faithfully and impartially discharge their duties.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is a requirement of all judges. All judges must fulfill their judicial oaths to "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States."

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **If politicians or the public don't like the outcome of a case, is it ever a judge's responsibility to take that into consideration or to make a ruling based on these feelings? Or is it Congress' responsibility to come to work and change a law where a faithful application of it by judges results in an outcome we either didn't intend or don't like?**

   Response: My response is no to the first question and yes to the second question.

6. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: A judge's personal views, if any, are irrelevant to the judicial decision-making process. Judges must impartially and faithfully apply precedent to the facts in the record.

7. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

8. Do you think judicial interpretation is different for Circuit Court Judges and District Court Judges? Why or why not?

Response: No. In my case, both courts follow United States Supreme Court and Ninth Circuit precedent and look to United States Supreme Court and Ninth Circuit precedent as to what tools of interpretation to use. District judges in other circuits would follow the precedent of their circuits as well as the United States Supreme Court.

9. When you were nominated for the Ninth Circuit in 2016, I read your student comments about minority judges:

As a law student, you told the Harvard Women's Law Journal: "Part of the problem has to do with the homogeneity of the bench—the reluctance of judges to look beyond their own frame of reference in interpreting the law." She continued: "'[M]inority judges' still need to maintain the disguise of 'objectivity' or else face challenges to their decisions . . . Yes, [a minority judge] is going to identify with [a minority party's] experiences, but she can't 'admit' this. We've got to get more clever and say, look, we're just as neutral as any sixty-year-old white man." She also asked, "[T]actically, what's more pragmatic, to pretend we're objective or to deconstruct objectivity itself?"

In 2016 when I asked you about this, you stated that you now "completely disagree" with that statement. You confirmed that at your hearing on October 5.

a. Does that still hold true?

Response: Yes, I completely disagree with this statement 100% from 31 years ago.

b. Is there anything you would like to add to your statement?

Response: Our justice system and the rule of law absolutely depend on judges being objective and impartial. During the 31 years since I made this statement in the fall of 1990, I have worked for the United States Senate Judiciary Committee, the United States Department of Justice, and the United States Attorney's Office as well as worked in private practice. I have also served as a California Superior Court judge and as a United States District Judge for the past nearly 14 years. I have fulfilled my judicial oath to be impartial and to faithfully discharge my duties.

c. In your role as a judge, is it important to maintain objectivity?

Response: Absolutely.

d. How would you now define objectivity? Has it changed since your statement as a law student, cited above?

Response: I would define objectivity as not being influenced by any personal likes or dislikes, opinions, prejudices or sympathy. I do not recall my understanding of objectivity when I made the statement in the fall of 1990, but I would expect my understanding was largely the same then.

10. Please provide a list of the ten most notable cases you have heard as a District Court Judge.

a. What were the primary legal issues in each of these cases?

1. *In Re: Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK (N.D. Cal.)

This is a Multi-District Litigation involving 32 data breach class action lawsuits filed against Yahoo nationwide. I appointed lead plaintiffs' counsel in February 2017. I granted in part and denied in part motions to dismiss in 2017 and 2018. The parties filed their first motion for preliminary approval of class action settlement in October 2018. I denied this motion on several grounds. Among other things, I found that the settlement's release of claims was inadequately disclosed and overbroad. Accordingly, the parties amended their settlement and filed a second motion for preliminary approval of a $117.5 million class action settlement. I preliminarily approved and then finally approved this amended settlement in 2019 and 2020, respectively. To maximize class members' recovery, I trimmed the plaintiffs' attorneys' fees.

The orders on the motions to dismiss are 2017 WL 3727318 (N.D. Cal. Aug. 30, 2017), and 313 F. Supp. 3d 1113 (N.D. Cal. 2018). The order initially denying preliminary approval is 2019 WL 387322 (N.D. Cal. Jan. 30, 2019). The order granting final approval and reducing the requested attorneys' fees is 2020 WL 4212811 (N.D. Cal. July 22, 2020).

2. *Daniel Miranda and Landmark Protection, Inc. v. U.S. Sec. Assocs., Inc.*, No. 18-CV-734-LHK (N.D. Cal.)

This case involved nonpayment of wages, breach of employment agreement, and open book account claims under California law as well as breach of asset purchase agreement and breach of covenant of good faith and fair dealing claims under Delaware law. In 2019, I denied the defendant's motion for summary judgment, ruled on motions in limine and evidentiary objections, presided over a jury trial, and denied the defendant's motions for judgment as a matter of law. After the jury verdict, I awarded prejudgment interest and waiting time penalties. The parties settled as to the plaintiff's attorneys' fees and stipulated to dismiss the case with prejudice.

The order denying the defendant's motion for summary judgment is 2019 WL 1960351 (N.D. Cal. May 2, 2019). The order ruling on the parties' motions in

limine is 2019 WL 2929966 (N.D. Cal. July 8, 2019). The order denying the defendant's motion for judgment as a matter of law is *Miranda v. U.S. Sec. Assocs., Inc.*, No. 18-CV-00734-LHK, No. 161 (N.D. Cal. Aug. 8, 2019). The order awarding prejudgment interest and waiting time penalties is *Miranda v. U.S. Sec. Assocs., Inc.*, No. 18-CV-00734-LHK, No. 183 (N.D. Cal. Aug. 15, 2019).

3. *Apple, Inc. v. Samsung Elecs. Co. Ltd.*, No. 11-CV-01846-LHK (N.D. Cal.)

This dispute involved claims of patent and trademark infringement, trade dress dilution, antitrust and contractual violations, and unfair competition. In 2011, I ordered expedited discovery and denied a preliminary injunction. After ruling on motions to dismiss, claim construction, *Daubert* motions, spoliation of evidence motions, summary judgment motions, and pre-trial motions, I presided over a jury trial in 2012 that resulted in a damages award of over $1 billion. In 2012 to 2013, I ruled on numerous post-trial motions including one ordering a damages retrial for certain patents and certain products and another denying a permanent injunction. The Federal Circuit reversed and remanded both injunction orders. In 2013, I presided over a damages jury retrial. In 2014, I ruled on numerous post-trial motions and denied a permanent injunction. The parties did not appeal the denial of the permanent injunction. In 2015, the Federal Circuit invalidated Apple's trade dresses. As a result, I scheduled a March 2016 retrial on patent damages for five products. However, I stayed the case when the Supreme Court of the United States granted certiorari in March 2016.

In December 2016, the U.S. Supreme Court reversed the Federal Circuit's method of calculating design patent damages and remanded. In February 2017, the Federal Circuit remanded the case to determine if Samsung had waived the design patent damages issue, and if not, to determine the proper method of calculating design patent damages and whether a new trial was necessary. In July 2017, I found that Samsung had not waived the design patent damages issue.

In October 2017, I held that a new trial with the correct method of calculating design patent damages was necessary. After ruling on summary judgment, motions to exclude expert reports and testimony, and on motions in limine, I presided over a jury trial in May 2018. The jury awarded design patent damages totaling over $538 million. The parties settled and stipulated to dismissal in June 2018 before I ruled on post-trial motions.

In total, I have issued approximately 120 substantive orders in this case. Below are citations to significant orders. The orders on motions to dismiss are 2011 WL 4948567 (N.D. Cal. Oct. 18, 2011), and 2012 WL 1672493 (N.D. Cal. May 14, 2012). The claim construction order is 2012 WL 1123752 (N.D. Cal. Apr. 4, 2012). The order granting-in-part and denying-in-part the parties' motions to exclude experts is 2012 WL 2571332 (N.D. Cal. June 30, 2012). The order finding that both parties spoliated evidence is 888 F. Supp. 2d 976 (N.D. Cal.

2012). The summary judgment orders are 2012 WL 2571719 (N.D. Cal. June 30, 2012) (order denying Samsung's motion for summary judgment), and 876 F. Supp. 2d 1141 (N.D. Cal. 2012) (order granting-in-part and denying-in-part Apple's motion for summary judgment). The post-trial orders from the previous trials are 909 F. Supp. 2d 1147 (N.D. Cal. 2012) (order denying permanent injunction), *aff'd in part, vacated in part*, 735 F.3d 1352 (Fed. Cir. 2013); 2012 WL 6574785 (N.D. Cal. Dec. 17, 2012) (order regarding juror misconduct); 2013 WL 11675 (N.D. Cal. Jan. 1, 2013) (order denying motion to stay); 932 F. Supp. 2d 1076 (N.D. Cal. 2013) (order regarding indefiniteness); 920 F. Supp. 2d 1079 (N.D. Cal. 2013) (order granting-in-part and denying-in-part Samsung's motion for judgment as a matter of law), *aff'd in part, rev'd in part*, 786 F.3d 983 (Fed. Cir. 2015); 920 F. Supp. 2d 1116 (N.D. Cal. 2013) (order granting-in-part and denying-in-part Apple's motion for judgment as a matter of law); 2013 WL 412862 (N.D. Cal. Jan. 29, 2013) (order denying damages enhancements); 926 F. Supp. 2d 1100 (N.D. Cal. 2013) (order regarding damages); 2014 WL 549324 (N.D. Cal. Feb. 7, 2014) (order denying cross-motions for judgment as a matter of law); and 2014 WL 976898 (N.D. Cal. Mar. 6, 2014) (order denying permanent injunction).

4. *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-2617 LHK (N.D. Cal.)

This was a Multi-District Litigation involving 129 data breach class action lawsuits filed against Anthem and Blue Cross Blue Shield insurance companies nationwide. In 2015, I appointed lead plaintiffs' counsel, granted a motion to remand, and denied two motions to remand. In 2016, I granted in part and denied in part two motions to dismiss. The parties fully briefed the issue of class certification, but reached a class action settlement for $115 million prior to the class certification ruling. In 2017, I granted preliminary approval of the class action settlement. The plaintiffs then moved for final approval of the class action settlement and for attorneys' fees. I appointed a Special Master to conduct a review of the plaintiffs' billing records. In 2018, I granted final approval of the class action settlement and reduced the plaintiffs' attorneys' fees in order to maximize class members' recovery.

The orders on the motions to dismiss are 162 F. Supp. 3d 953 (N.D. Cal. 2016), and 2016 WL 3029783 (N.D. Cal. May 27, 2016). The order granting preliminary approval is 2017 WL 3730912 (N.D. Cal. Aug. 25, 2017). The order granting final approval is 327 F.R.D. 299 (N.D. Cal. 2018). The order adopting in part the Special Master's report and recommendation regarding the motion for attorneys' fees and costs is 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018).

5. *Apple, Inc. v. Samsung Elecs. Co. Ltd.*, No. 12-CV-00630 LHK (N.D. Cal.)

This dispute involved cross-claims of patent infringement as well as claims of antitrust and contractual violations. In July 2012, I granted a preliminary

injunction, which the Federal Circuit reversed. In 2013 and 2014, I construed the patents' claims and ruled on summary judgment and *Daubert* motions. In 2014, I presided over a jury trial that resulted in a damages award of over $119 million. I also ruled on pretrial and post-trial motions. I denied a permanent injunction, which the Federal Circuit reversed. In February 2016, the Federal Circuit affirmed the judgments and verdicts as to four patents, but reversed the judgments and jury verdicts for three Apple patents that were the bases for the permanent injunction that the Federal Circuit ordered that I enter.

However, in October 2016, the Federal Circuit en banc reversed the Federal Circuit panel, upheld the judgment and verdicts for the three reversed Apple patents, and remanded the issue of willful infringement in light of an intervening United States Supreme Court case. In June 2017, I concluded that the jury's finding of willfulness was supported by substantial evidence and granted a moderate award of enhanced damages. In February 2018, I granted in part and denied in part Apple's motion for ongoing royalties, thereby awarding Apple $6,494,252 in royalties. Final judgment was entered in April 2018.

Below are citations to significant orders. The order granting a preliminary injunction is 877 F. Supp. 2d 838 (N.D. Cal. 2012), *rev'd and remanded*, 695 F.3d 1370 (Fed. Cir. 2012). The claim construction orders are 2013 WL 1502181 (N.D. Cal. Apr. 10, 2013), and 2014 WL 1322028 (N.D. Cal. Mar. 28, 2014). The order on cross-motions for summary judgment is 2014 WL 252045 (N.D. Cal. Jan. 21, 2014). The order granting-in-part and denying-in-part the parties' motions to exclude experts is 2014 WL 794328 (N.D. Cal. Feb. 25, 2014). The post-trial orders are 2014 WL 12776506 (N.D. Cal. Aug. 21, 2014) (order denying judgment of invalidity); 2014 WL 7496140 (N.D. Cal. Aug. 27, 2014) (order denying permanent injunction), *vacated and remanded*, 809 F.3d 633 (Fed. Cir. 2015); 67 F. Supp. 3d 1100 (N.D. Cal. 2014) (order granting-in-part and denying-in-part Apple's motion for judgment as a matter of law), *aff'd in part, vacated in part*, 816 F.3d 788 (Fed. Cir.), *aff'd in part and remanded in part on en banc reh'g*, 839 F.3d 1034 (Fed. Cir. 2016) (en banc); 2014 WL 4467837 (N.D. Cal. Sept. 9, 2014) (order granting-in-part and denying-in-part Samsung's motion for judgment as a matter of law), *aff'd in part, rev'd in part*, 816 F.3d 788 (Fed. Cir. 2016); 2014 WL 6687122 (N.D. Cal. Nov. 25, 2014) (order granting-in-part Apple's motion for ongoing royalties); and *Apple, Inc. v. Samsung Elecs. Co., Ltd.*, No. 12-CV-00630-LHK, No. 2157 (N.D. Cal. Jan. 18, 2016) (order entering permanent injunction) (copy supplied).

6. *In re High Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK (N.D. Cal.)

This case was a consolidation of five antitrust class action lawsuits. In 2012, I granted in part and denied in part a motion to dismiss. In 2013, I denied with leave to amend class certification and denied in part and granted in part the parties' various motions to strike expert reports and evidence. Later in 2013, I certified a damages class and preliminarily approved the plaintiffs' $20 million

settlement with Intuit, Lucasfilm, and Pixar. In 2014, the Ninth Circuit denied review of my class certification order. Also in 2014, I denied six summary judgment motions, denied the defendants' motion to exclude the plaintiffs' expert report, and denied in part and granted in part the defendants' motion to strike the plaintiffs' expert report. In 2014, I granted final approval to the plaintiffs' settlement with Intuit, Lucasfilm, and Pixar, but denied preliminary approval of the plaintiffs' $324.5 million settlement with Apple, Google, Intel, and Adobe. In 2015, I granted preliminary and final approval of the plaintiffs' new $415 million settlement with Apple, Google, Intel, and Adobe.

Below are citations to significant orders. The order on both motions to dismiss is 856 F. Supp. 2d 1103 (N.D. Cal. 2012). The orders on class certification are 289 F.R.D. 555 (N.D. Cal. 2013) (order denying class certification and granting-in-part and denying-in-part motions to strike expert reports), and 985 F. Supp. 2d 1167 (N.D. Cal. 2013) (order granting motion for class certification). The order denying the defendants' six motions for summary judgment is 2014 WL 1283086 (N.D. Cal. Mar. 28, 2014). The order granting final approval of the plaintiffs' settlement with Pixar, Lucasfilm, and Intuit is 2014 WL 10520477 (N.D. Cal. May 16, 2014). The order denying preliminary approval of the settlement with Apple, Google, Intel, and Adobe is 2014 WL 3917126 (N.D. Cal. Aug. 8, 2014). The order granting final approval of the plaintiffs' settlement with Apple, Google, Intel, and Adobe is 2015 WL 5159441 (N.D. Cal. Sept. 2, 2015).

7. *United States v. Orellana*, No. 09-CR-00096 LHK (N.D. Cal.), and *Orellana v. United States*, No. 13-CV-00698 LHK (N.D. Cal.), 2015 WL 4694038 (N.D. Cal. Aug. 6, 2015)

In 2012, I ruled on pretrial motions and presided over a five-day criminal bench trial involving one count of possession with intent to distribute cocaine and one count of conspiracy. I found the defendant guilty of both counts and sentenced him. In 2014, the Ninth Circuit affirmed the conviction and sentence. The defendant thereafter filed a petition for writ of habeas corpus. In 2015, I denied with prejudice the defendant's habeas corpus petition, but reduced the defendant's sentence pursuant to the parties' stipulation based on a change in the U.S. Sentencing Guidelines.

8. *State Farm Life Ins. Co. v. Cai*, No. 09-CV-00396-LHK (N.D. Cal.)

This was an interpleader action to resolve competing claims to a life insurance policy stemming from Mr. Cai's allegedly felonious and intentional killing of the insured, his wife, Ms. Deng. In 2010, I denied State Farm's motion for judgment in interpleader and granted a motion to dismiss cross-claims. In 2011, I denied Mr. Cai's motion to dismiss a cross-claim brought by Ms. Deng's estate. In 2013, I granted State Farm's renewed motion for judgment in interpleader and ruled on State Farm's motion for attorneys' fees. In 2014, I ruled on pretrial motions and presided over a six-day jury trial on cross-claims brought against Mr. Cai by

Ms. Deng's estate. Mr. Cai represented himself until he retained counsel prior to trial. The jury found that Mr. Cai feloniously and intentionally killed Ms. Deng, and thus the life insurance proceeds were awarded to Ms. Deng's estate.

The order denying judgment in interpleader and granting the motion to dismiss cross-claims is 2010 WL 4628228 (N.D. Cal. Nov. 4, 2010). The order denying the second motion to dismiss cross-claims is 2011 WL 864938 (N.D. Cal. Mar. 11, 2011). The order entering judgment in interpleader for State Farm is 2013 WL 4782383 (N.D. Cal. Sept. 6, 2013).

9. *Lift-U v. Ricon Corp.*, No. 10-CV-1850 LHK (N.D. Cal.); *Lift-U v. N. Am. Bus Indus., Inc.*, No. 12-CV-1129 LHK (N.D. Cal.); and *Lift-U v. N. Am. Bus Indus., Inc.*, No. 12-CV-3603 LHK (N.D. Cal.)

These were three patent infringement actions. In 2011, I construed the patent claims, granted summary judgment of invalidity, and denied summary judgment of non-infringement. In 2012, I granted in part and denied in part the parties' cross-motions for partial summary judgment, which addressed validity, infringement, willfulness, and lost profits for four patents. At the parties' request, I presided over the settlement conference that settled all three cases in 2012.

The orders on summary judgment are 2011 WL 5118634 (N.D. Cal. Oct. 28, 2011) (order granting summary judgment of invalidity and denying summary judgment of non-infringement), and 2012 WL 5303301 (N.D. Cal. Oct. 25, 2012) (order granting-in-part and denying-in-part the cross-motions for partial summary judgment).

10. *Columbia Cas. Ins. Co. v. Gordon Trucking*, No. 09-CV-05441 LHK (N.D. Cal.)

This was a civil action between two co-insurers over responsibility for paying for defense costs and the settlement of an underlying state court personal injury case. In 2010, I granted a motion to dismiss and granted in part and denied in part a motion for partial summary judgment. In 2011, I denied motions in limine and presided over a four-day bench trial. After trial, I found that the plaintiff was obligated to pay its $5 million policy limits. The parties reached a settlement and filed a stipulation of dismissal prior to filing any post-trial motions.

The order granting the motion to dismiss is 2010 WL 4591977 (N.D. Cal. Nov. 4, 2010). The order granting-in-part and denying-in-part the motion for partial summary judgment is 758 F. Supp. 2d 909 (N.D. Cal. 2010). My findings of fact and conclusions of law are 2011 WL 4434722 (N.D. Cal. Sept. 23, 2011).

b. Why did you find them to be the most notable for your tenure?

Response: I believe the above ten cases show a wide range of subject matter areas and complex and novel legal issues as well as the breadth and depth of the work I have done as a United States District Judge on motions, trials, and settlement conferences.

c. Have your views changed on how you ruled in any of these cases? If so, please explain how and why.

Response: It would not be appropriate for me to comment on what cases were correctly or wrongly decided.

11. How did your time with the Justice Department and in private practice inform how you approach your role as a judge?

Response: I base my decisions as a judge on the record before me and apply precedent to that record. My personal views are irrelevant to interpreting and applying the law. However, my prior legal experiences did give me broad familiarity with different federal civil and criminal statutes.

At the United States Department of Justice, I advised and prepared briefing materials for the Attorney General and the Deputy Attorney General; worked on formulating the Administration's position on legislation; vetted candidates for appointment to the United States Sentencing Commission; served as a liaison with Congress and state and local officials; represented the Department of Justice in interagency meetings; and assisted in the Department's implementation of new laws.

As an Assistant United States Attorney, I investigated and prosecuted federal crimes, including bank robbery; arson; fraud; narcotics; public corruption; possession of counterfeit currency; immigration; and theft crimes. I tried bench and jury trials. I litigated in and argued before the Ninth Circuit.

In private practice, I litigated complex civil cases involving patent, trade secret, securities, dissenting shareholder appraisal, contract, fraud, copyright, and commercial disputes in trial and appellate courts. I represented plaintiffs and defendants ranging from individual inventors to large multinational companies.

12. As a federal judge, you have already been required to manage staff and clerks to get the work of the District Court.

a. Please describe your approach to management, and how you work with professional staff and with clerks to effectively manage the workload of the court.

b. How many professional staff do you currently manage?

c. How many law clerks do you currently supervise? How many have you worked with during your tenure as District Court Judge?

Response: As a United States District Judge over the last nearly 11.5 years I have presided over an average of 719 cases per year. In 2017 I presided over 941 cases. I currently supervise three law clerks. We work together very closely on all cases over which I preside. Every year I have at least three law clerks. In some years, the San Jose District Judges have shared law clerks. I also work with the Court's pro se law clerks on my pro se prisoner cases and the Court's death penalty law clerks on my death penalty cases. The other professional staff with whom I work are employees of the Clerk's Office and are managed by the Clerk's Office.

13. Do you expect to maintain the same management style if you are confirmed as a Circuit Court Judge? How do you expect your experience as a manager to change at the Circuit Court compared to District Court level?

Response: If confirmed, I will meet with other Ninth Circuit Judges to learn how they set up and manage their Chambers and then decide how best to manage my own Chambers.

14. How have you worked to support the careers of those you supervise, including law clerks, and how would you do so if you were confirmed as a Circuit Court Judge?

Response: I provide career advice and serve as a reference for my law clerks and would continue to do so, if confirmed.

15. What outside the box ideas would you bring to this position to ensure laws are faithfully executed for all Americans?

Response: I will faithfully follow precedent. During my 2.5 years as a California Superior Court Judge, I presided over 500 cases a week. I was reversed only once in part. During my nearly 11.5 years as a United States District Judge, I have issued over 3,250 decisions and have been reversed only 42 times. If confirmed, I will do my level best to continue to faithfully apply United States Supreme Court and Ninth Circuit precedent.

Intellectual Property

16. The Ninth Circuit in *FTC v. Qualcomm* strongly disagreed with your reasoning and your decision in that case. It initially characterizing your decision as either "a trailblazing application of the antitrust laws" or "an improper excursion beyond the outer limits of the Sherman Act." In its 2020 decision, it concluded that your order had exceeded the Sherman Act's limits.

a. Do you agree with the Ninth Circuit's statement that your decision "exceeded the outer limits of the Sherman Act?" Why or why not?

b. At the hearing, you declined to say that you agreed with the Ninth Circuit's opinion and instead stated that "…antitrust is a very complex area of the law and I can see that there are different viewpoints." Do you agree with Ninth Circuit's critique of your decision?

c. Your decision states that Qualcomm had a monopoly, the Ninth Circuit disagreed and found that you had made several errors in your decision. Is this what you mean by a "different viewpoints"?

d. At the hearing, you stated in response to Senator Feinstein that you stated that "every reversal, I try to learn from it, I try to glean—what did I view differently that I need to view differently going forward… I try very hard, and I do incorporate it into my work going forward." What do you need to view differently with respect to *Qualcomm* moving forward?

e. Do you agree with the Ninth Circuit's decision that you erred in holding that Qualcomm is under an antitrust duty to license to rival chip makers because none of the *Aspen Skiing* exceptions are present (let alone all of them)?

f. Are you deconstructing antitrust law to fit your preferred outcome, one that permits analysis of harm to consumers and customers, and that ignores Supreme Court's *Trinko* guidance warning that *Aspen* is the rare exception?

g. Do you agree with the Ninth Circuits analogy in *Qualcomm* that "[t]hus, while Qualcomm's policy toward OEMs is "no license, no chips," its policy toward rival chipmakers could have been characterized as "no license, no problem?"

h. Do you agree with the Ninth Circuit's view that novel business practices—especially in technology markets--should not be "conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use."

i. Do you agree with the Ninth Circuit that your opinion addressed the main theory of harm, namely that the licensing royalty rates impose a surcharge on rivals modem chips was addressed only "in passing"?

j. Do you agree with the Ninth Circuit that you erred in looking beyond the relevant market for anticompetitive conduct, specifically looking at the broader market of cellular services generally and included Qualcomm's customers?

k. Do you agree that the Ninth Circuit appropriately reframed to focus on the chip market that you defined as the relevant market?

l. What did you learn from the decision?

Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020), the Ninth Circuit held that the FTC failed to show that three of Qualcomm's business practices violated Section 2 of the Sherman Act. First, the Ninth Circuit held that "Qualcomm's practice of licensing its [standard essential patents] exclusively at the [original equipment manufacturers] level does not amount to anticompetitive conduct in violation of § 2, as Qualcomm is under no antitrust duty to license rival chip suppliers." *Id.* at 1005. Although the Ninth Circuit declined to address whether "Qualcomm has breached any of its [fair, reasonable, and non-discriminatory] commitments," the Ninth Circuit stated that "the remedy for such a breach lies in contract and patent law." *Id.* Second, the Ninth Circuit held that "Qualcomm's patent-licensing royalties and 'no license, no chips' policy do not impose an anticompetitive surcharge on rivals' modem chip sales." *Id.* According to the Ninth Circuit, "these aspects of Qualcomm's business model are 'chip-supplier' neutral and do not undermine competition in the relevant antitrust markets." *Id.* Third, the Ninth Circuit held that "Qualcomm's 2011 and 2013 agreements with Apple ha[d] not had the actual or practical effect of substantially foreclosing competition in the CDMA modem chip market." *Id.* "Furthermore, because these agreements were terminated years ago by Apple itself, there [was] nothing to be enjoined." *Id.* Qualcomm did not appeal my finding that Qualcomm had a monopoly, so that issue was not before the Ninth Circuit.

I will faithfully follow this Ninth Circuit precedent. My decision was reversed and has no legal effect. Each and every day I do my level best to accurately interpret and apply the law to the record before me. However, I do not always get it right.

17. Your decision in *Qualcomm* raised serious concerns about the effect it would have on patent law, antitrust law, and innovation going forward.

a. Do you agree that contract law and patent law are better avenues to resolve FRAND disputes, and that bringing this case in antitrust, particularly in the controversial manner in which it was brought, is likely to create bad precedent and have negative impacts on innovation policy?

Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020), the Ninth Circuit held that where a party brings a claim that a standard essential patent holder has breached fair, reasonable, and non-discriminatory obligations, "the remedy for such a breach lies in contract and patent law." *Id.*

b. In the *Qualcomm* decision, you did not address what a reasonable royalty rate would be before declaring Qualcomm's rate "unreasonable". Were you unaware of precedent under patent law setting forth ways to evaluate whether royalties are unreasonable, including by establishing a reasonable royalty?

Response: My *FTC v. Qualcomm* order has been reversed, and I will follow the Ninth Circuit's precedent. Nonetheless, to respond to this question, I set forth my understanding of the law at the time of my order below.

Under Federal Circuit law, "it is generally required that royalties be based not on the entire product, but instead on the 'smallest salable patent-practicing unit.'" *LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 67 (Fed. Cir. 2012). There is a "narrow exception to this general rule," which states that "[i]f it can be shown that the patented feature drives the demand for an entire multi-component product," it is reasonable for the royalty to be "a percentage of revenues or profits attributable to the entire product." *Id.*

Applying this precedent, I determined that Qualcomm had not based its royalty rate on the "smallest salable patent-practicing unit" and that the trial record established that modem chips do not drive demand for mobile handsets. *Fed. Trade Comm'n v. Qualcomm Inc.*, 411 F. Supp. 3d 658, 782 (N.D. Cal. 2019). Accordingly, in light of my other findings that Qualcomm had inflated its royalty rate, I did not find it necessary to separately find what the reasonable rate was.

18. The Supreme Court in *Trinko* stated that "[n]o court should impose a duty to deal that it cannot explain or adequately and reasonably supervise," since this risks the court "assum[ing] the day-to-day controls characteristic of a regulatory agency." 540 U.S. 398, 415 (2004). The global injunction in *Qualcomm* would have imposed such a duty, requiring Qualcomm to "make exhaustive SEP licenses available to [competitors] on FRAND terms" and "negotiate…in good faith" with customers "under conditions free from the threat of lack of access".

a. Do you think that worldwide injunctions on issues involving patents or patent licenses issues are appropriate? Why or why not?

Response: My *FTC v. Qualcomm* order has been reversed, and I will follow the Ninth Circuit's precedent. Nonetheless, to respond to this question, I set forth my understanding of the law at the time of my order below.

In my *FTC v. Qualcomm* order, I based the injunction on the following authorities. The United States Supreme Court has stated that "adequate relief in a

monopolization case should put an end to the combination and deprive the defendants of any of the benefits of the illegal conduct, and break up or render impotent the monopoly power found to be in violation of the Act." *United States v. Grinnell Corp.*, 384 U.S. 563, 577 (1966). Moreover, where the government has brought the action and has established an antitrust violation, "all doubt as to the remedy are to be resolved in [the government's] favor." *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 334 (1961). A district court has "'large discretion' to fit the decree to the special needs of the individual case." *Ford Motor Co. v. United States*, 405 U.S. 562, 573 (1972).

The Federal Trade Commission Act ("FTCA") provides the FTC with the authority to seek permanent injunctions of antitrust violations and empowers courts to enter such injunctions. *See* 15 U.S.C. § 53(b). The Ninth Circuit has explained that, if the FTC seeks relief under the Section 53 of the FTCA and proves an antitrust violation, permanent injunctive relief should be granted if "there exists some cognizable danger of recurrent violation." *Fed. Trade Comm'n v. Evans Prods. Co.*, 775 F.2d 1084, 1087 (9th Cir. 1985); *see also United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953) (holding that permanent injunctive relief should be granted for a Clayton Act violation "if the wrongs are ongoing or likely to recur").

b. In light of *Trinko,* is it appropriate to relegate to a national regulatory authority parties' extraterritorial contract negotiations?

Response: The United States Supreme Court's decision in *Verizon Commc'ns Inc. v. L. Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004), addressed the substantive standard for a duty to deal claim. The United States Supreme Court did not address whether that standard would be different if applied to international conduct.

As a United States District Judge, it would be inappropriate for me to comment on the merits of a particular legal argument outside the context of a "genuine, live dispute[s] between adverse parties." *Carney v. Adams*, 141 S. Ct. 493, 498 (2020). If these arguments were presented to me in the context of a live case or controversy, I would consider them fully and fairly and apply United States Supreme Court and Ninth Circuit precedent.

c. Outside of FRAND cases, would you agree that it is rare for national courts to seek to reform or create private contractual arrangements that extend beyond their national borders? What about with respect to patents that are outside the courts' jurisdiction?

Response: Outside of FRAND cases, I do not have any knowledge about the frequency with which parties ask courts to "reform or create private contractual arrangements that extend beyond their national borders." In *Microsoft Corp. v. Motorola*, Inc., 795 F.3d 1024, 1033 (9th Cir. 2015), the Ninth Circuit affirmed the district court's decision that ordinary principles of contract law apply to

FRAND obligations, including those relating to foreign standard essential patents. A United States court may not adjudicate infringement or invalidity of foreign patents. *Stein Assocs., Inc. v. Heat & Control, Inc.*, 748 F.2d 653, 658 (Fed. Cir. 1984) ("Only a British court, applying British law, can determine validity and infringement of British patents.").

d. What role does international comity have in such injunctive or decisions regarding patent licensing outside the United States?

Response: International comity is relevant for determining whether a company can enforce a license to use a foreign patent in a U.S. District Court. In *Microsoft v. Motorola*, 696 F.3d 872 (9th Cir. 2012), the Ninth Circuit considered a claim that Motorola had breached its obligation to license standard essential patents ("SEPs") to Microsoft at fair, reasonable, and non-discriminatory rates. Two of those SEPs were German patents. *Id.* at 879. After Microsoft filed its breach of contract action in U.S. District Court, Motorola asserted those patents against Microsoft in a German court and received an injunction. *Id.* In the U.S. District Court, Microsoft moved to enjoin Motorola from enforcing that German injunction. *Id.* at 880. The Ninth Circuit explained that the "framework for evaluating a foreign anti-suit injunction" includes "assess[ing] whether the injunction's 'impact on comity is tolerable.'" *Id.* at 881.

19. In *Qualcomm*, you stated that "Qualcomm repeatedly acknowledged that its licensing practices raise antitrust claim, yet continued the licensing practices anyway." (pg. 387/808). If business documents reveal that a business is aware that a competitor or customer may raise legal claims against that company, is that the same as admitting that the behavior is illegal? Is it possible that a risk of having to defend legal claims, even if ultimately without merit, is something that a responsible business should assess?

a. Assistant Attorney General Makan Delrahim developed an enlightened way of addressing matters at the antitrust-intellectual property nexus. He called it the New Madison Approach. It respected patent exclusivity, even when standard-essential patents under FRAND commitments are involved. How might your reversed ruling in the *Qualcomm* case have been better informed and on more solid legal ground if you'd incorporated the New Madison Approach into proper account?

Response: As a United States District Judge, it would be inappropriate for me to comment on the merits of a particular legal argument outside the context of a "genuine, live dispute[s] between adverse parties." *Carney v. Adams*, 141 S. Ct. 493, 498 (2020). If arguments based on the "New Madison Approach" were presented to me in the context of a live case or controversy, I would consider them fully and fairly and apply United States Supreme Court and Ninth Circuit precedent.

b. Please explain how you rejected industrywide licensing at the patent portfolio level rather than at the individual chip level.

Response: Please see my response to Question 16.

c. Do you agree with the Ninth Circuit's assessment on this point?

Response: I will follow United States Supreme Court and Ninth Circuit precedent in any future case that raises these issues. My personal views, if any, are irrelevant to interpreting and applying the law.

d. There are concerns that this reflects a personal policy preference, rather than a misunderstanding of the law to ignore the marketplace realities or you disregarded law and fact and went with personal policy preferences. Do your policy preferences help patent owners in enforcing their property rights?

Response: I will follow United States Supreme Court and Ninth Circuit precedent in any future case that raises these issues. My personal views, if any, are irrelevant to interpreting and applying the law.

During my nearly 14 years as a United States District Judge and a California Superior Court Judge, I have done my level best to impartially and faithfully discharge my duties.

During my nearly 11.5 years as a United States District Judge, I have presided over an average of 719 cases per year and in 2017 I presided over 941 cases. I have issued over 3,250 written decisions and have been reversed only 42 times.

During my 2.5 years as California Superior Court Judge, I presided over 500 cases a week. I was reversed only once in part.

If confirmed, I will do my level best to continue to faithfully apply United States Supreme Court and Ninth Circuit precedent.

20. What are your thoughts on the best way to analyze patent licensing issues?

Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020), the Ninth Circuit held that where a party brings a claim that a standard essential patent holder has breached [fair, reasonable, and non-discriminatory] obligations, "the remedy for such a breach lies in contract and patent law." *Id.* In *Microsoft Corp. v. Motorola*, Inc., 795 F.3d 1024, 1033 (9th Cir. 2015), the Ninth Circuit affirmed the district court's decision that ordinary principles of contract law apply to FRAND obligations. For example, the third-party beneficiary doctrine allows third parties to enforce a standard essential patent holder's commitment to a standard setting organization to provide licenses at FRAND rates. *Id.*

21. How does your experience as a patent litigator inform your judicial decisions?

Response: I base my decisions as a judge on the record before me and apply precedent to that record. My personal views are irrelevant to interpreting and applying the law.

In private practice, I litigated complex civil cases involving patent, trade secret, securities, dissenting shareholder appraisal, contract, fraud, copyright, and commercial disputes in trial and appellate courts. I represented plaintiffs and defendants ranging from individual inventors to large multinational companies.

22. Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the appropriate use of digital content and technologies.

a. What experience do you have with copyright law?

Response: To the best of my recollection, I worked on a few copyright cases as a lawyer. As a United States District Judge, I have presided over civil and criminal copyright infringement cases.

b. How many cases have you heard where copyright law was an issue in the case? What was the outcome in these cases?

Response: On October 14, 2021 I ran a Westlaw search, which showed that I have issued 77 orders that appear to relate to copyright infringement. A list of these orders is attached.

c. Please describe any particular experiences involving the Digital Millennium Copyright Act.

Response: On October 14, 2021 I ran a Westlaw search. These orders appear responsive to your request regarding the Digital Millennium Copyright Act ("DMCA"). *See Shropshire v. Canning*, 809 F. Supp. 2d 1139 (N.D. Cal. 2011) (denying motion to dismiss because plaintiff sufficiently alleged a DMCA claim); *Synopsis, Inc. v. InnoGrit, Corp.*, No. 19-CV-02082-LHK, 2019 WL 2617091 (N.D. Cal. June 26, 2019) (granting preliminary injunction because plaintiff was likely to succeed on its DMCA circumvention claim); *Synopsis, Inc. v. InnoGrit, Corp.*, No. 19-CV-02082-LHK, 2019 WL 4848387 (N.D. Cal. Oct. 1, 2019) (plaintiff adequately alleged a circumvention claim under the DMCA); *Autodesk, Inc. v. Flores*, No. 10–CV–01917–LHK, 2011 WL 337836 (N.D. Cal. Jan. 31, 2011) (granting plaintiff's motion for default judgment arising in part from section 1201 DMCA claims and permanent injunction); *DiscoverOrg Data, LLC v. Bitnine Global, Inc.*, No. 19-CV-08098-LHK, 2020 WL 6562333 (N.D. Cal. Nov. 9, 2020) (finding plaintiff adequately pled a claim for circumvention under the DMCA).

23. The legislative history of the Digital Millennium Copyright Act shows that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory provisions and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. In your opinion, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: If a federal statutory provision had been previously interpreted by the United States Supreme Court or the Ninth Circuit, that interpretation would be binding precedent. If there is no binding precedent, I first look at the statutory text. As the United States Supreme Court has repeatedly stated, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). I then look at the statutory scheme. "If the statutory language is unambiguous and 'the statutory scheme is coherent and consistent,'" then "the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). If the text is ambiguous or the statutory scheme is not coherent or consistent, then I use the tools of statutory construction, such as the canons of construction. I would look to precedent of the United States Supreme Court and Ninth Circuit interpreting related or analogous statutory provisions to discern which statutory construction tools to use. As a last resort, I would consider legislative history, but would do so with caution. The United States Supreme Court has stated that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil*, 545 U.S. at 568.

However, the United States Supreme Court has held that legislative history may "shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil*, 545 U.S. at 568. In *Garcia v. United States*, the United States Supreme Court reiterated that "the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'" 469 U.S. 70, 76 (1984) (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969)). Moreover, the United States Supreme Court has held that "[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended." *Rusello v. United States*, 464 U.S. 23-24 (1983).

Lastly, the United States Supreme Court has cautioned that legislative history may give "unrepresentative committee members—or, worse yet, unelected staffers and lobbyists—both the power and the incentive to attempt strategic manipulations of

legislative history to secure results they were unable to achieve through the statutory text." *Exxon Mobil*, 545 U.S. at 568. Thus, the United States Supreme Court has "eschewed reliance on the passing comments of one Member and casual statements from the floor debates." *Garcia*, 469 U.S. at 76 (citation omitted).

b. Do you believe that online service providers should be held accountable for copyright infringement occurring on their systems if they are aware of facts and circumstances from which such infringement is apparent?

Response: Although the United States Supreme Court has not interpreted the safe harbor provision in the Digital Millennium Copyright Act, the Ninth Circuit has explained that "[t]he DMCA's safe harbor provisions exempt Internet service providers from copyright liability under discrete statutory provisions." *Adobe Sys. Inc v. Christenson*, 809 F.3d 1071, 1079 (9th Cir. 2015). For example, "[u]nder § 512(c)(1)(A), a service provider can receive safe harbor protection only if it '(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;' '(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or' '(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material.'" *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1020 (9th Cir. 2013). The Ninth Circuit explained that it read the statute "to have an implicit 'and' between § 512(c)(1)(A)(i) and (ii)." *Id.* at 1020 n.11. "[T]hus treat[ing] the provisions as stating that to qualify for the safe harbor, a service provider must either (1) have no actual knowledge and no 'aware[ness] of facts or circumstances from which infringing activity is apparent' or (2) expeditiously remove or disable access to infringing material of which it knows or is aware." *Id.* (third alteration in original).

c. What experiences do you have addressing intermediary liability for online service providers?

Response: Based on a Westlaw search of my orders, I found only one case in which this issue arose. However, in that case the plaintiff voluntarily dismissed the online service provider, YouTube, before I issued any substantive rulings in the case. After dismissing YouTube from the case, the plaintiff sought to litigate against only the party who uploaded the allegedly infringing video under the Digital Millennium Copyright Act. After YouTube was dismissed from the case, I ruled on three motions to dismiss on issues unrelated to intermediary liability for online service providers. *See Shropshire v. Canning*, No. 10–CV–01941–LHK, 2011 WL 90136 (N.D. Cal. Jan. 11, 2011); 809 F. Supp. 2d 1139 (N.D. Cal. 2011); No. 10–CV–01941–LHK, 2012 WL 13658 (N.D. Cal. Jan. 4, 2012).

24. Over time the number of copyright takedown notices has skyrocketed. Some have raised concerns about fraudulent and abusive notices that may restrain fair use, free

speech, or misuse the notice-and-takedown process. Others have noted that courts interpretation of the "good faith" requirement to send notices may preclude automated notice sending, placing too great a burden on rightsholders.

a. In an increasingly automated world, how can courts appropriately evaluate concepts like "good faith" or "bad faith" that apply to machine-driven actions?

Response: In *American Broadcasting Companies, Inc. v. Aereo, Inc.*, 573 U.S. 431, 451 (2014), the United States Supreme Court responded to concerns about technology outpacing statutory frameworks: "to the extent commercial actors or other interested entities may be concerned with the relationship between the development and use of [certain] technologies and the Copyright Act, they are of course free to seek action from Congress. *Cf.* Digital Millennium Copyright Act, 17 U.S.C. § 512." The Ninth Circuit has explained that "[t]he DMCA requires a complainant to declare, under penalty of perjury, that he is authorized to represent the copyright holder, and that he has a good-faith belief that the use is infringing. This requirement is not superfluous. Accusations of alleged infringement have drastic consequences: a user could have content removed, or may have his access terminated entirely. If the content infringes, justice has been done. But if it does not, speech protected under the First Amendment could be removed. We therefore do not require a service provider to start potentially invasive proceedings if the complainant is unwilling to state under penalty of perjury that he is an authorized representative of the copyright owner, and that he has a good-faith belief that the material is unlicensed." *Perfect 10, Inc. v. CCBill* LLC, 488 F.3d 1102, 1113 (9th Cir. 2007). To the extent the current DMCA framework precludes or impedes automated notice requirements, that is a question for policymakers and stakeholders.

b. What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?

Response: On October 14, 2021 I ran a Westlaw search. The search results showed that I have issued approximately 20 orders involving the First Amendment and free speech issues. Based on the search it appears I have had one case where free speech and intellectual property issues overlapped. In *Art of Living Foundation v. Does 1-10*, I granted a motion to quash a subpoena for one anonymous blogger because their First Amendment right to anonymous speech outweighed the need for discovery at that stage of copyright litigation. No. C10–05022 LHK (HRL), 2011 WL 3501830, at *1-5 (N.D. Cal. Aug. 10, 2011).

Second Amendment

25. How many cases have you heard which raised Second Amendment questions? Please be specific about the number of cases and whether the outcomes protected or restricted Second Amendment rights.

Response: I have not heard any cases in which Second Amendment questions were raised.

26. What were the most common issues which arose during Second Amendment cases?

Response: Please see my response to Question 25.

27. How did you go about interpreting Second Amendment cases? Please explain what factors you considered when reviewing Second Amendment cases.

Response: Please see my response to Question 25.

28. As a federal judge, you swear an oath to protect and defend the Constitution, which includes protecting our liberties under the Bill of Rights.

a. How have you ruled in Second Amendment cases as a District Court Judge?

Response: Please see my response to Question 25.

b. What will you do, if confirmed, to ensure Americans feel confident that their Second Amendment rights are protected?

Response: If I were to hear such a case in the future, I would faithfully follow the United States Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

29. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?

Response: In *District of Columbia v. Heller*, the United States Supreme Court held that a ban on firearms in the home violates the Second Amendment. 554 U.S. 570, 634-35 (2008). The ban on handguns in the home in *Heller* failed any standard of scrutiny applied to enumerated constitutional rights. *Id.* at 628-29. The United States Supreme Court emphasized that "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and provided three examples of presumptively valid regulations of firearms: (1) prohibition on possession by felons or the mentally ill; (2) "laws forbidding the carrying of firearms in sensitive places such as schools or government buildings"; and (3) "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at

626-27. The United States Supreme Court noted that these were examples and the "list does not purport to be exhaustive." *Id.* at 627 n.26.

Applying *Heller*, the Ninth Circuit has adopted a two-step framework when evaluating whether a challenged regulation or law infringes on the rights protected by the Second Amendment. *See Young v. Hawaii*, 992 F.3d 765, 783 (9th Cir. 2021) (en banc). First, the Ninth Circuit determines whether "the challenged law affects conduct that is protected by the Second Amendment" by looking to the "historical understanding of the scope of the right." *Id.* The Ninth Circuit considers "whether there is persuasive historical evidence showing that the regulation does not impinge on the Second Amendment right as it was historically understood. Laws restricting conduct that can be traced to the founding era and are historically understood to fall outside of the Second Amendment's scope may be upheld without further analysis." *Id.* Furthermore, if the challenged law falls within the "presumptively lawful regulatory measures" identified by *Heller*, the law may be upheld without further analysis. *Id.*

If the law is within the historical scope of the Second Amendment, or not presumptively lawful, the Ninth Circuit determines what level of scrutiny applies. *Id.* at 784. As the Ninth Circuit explained in *Young*, it has "understood Heller to require one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny." *Id.* (quoting *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016)).

30. Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: In *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020), the United States Supreme Court held that "[s]temming the spread of COVID-19 is unquestionably a compelling interest" for the purposes of strict scrutiny. Accordingly, a regulation aimed at stemming the spread of a pandemic like COVID-19 may restrict constitutional rights that trigger strict scrutiny if the regulation is "narrowly tailored." *Id.* However, in *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the United States Supreme Court clarified that where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)). A similar analysis would likely apply to restrictions on other fundamental rights.

Immigration

31. What experience have you had with immigration law cases during your time as a District Court Judge?

Response: Based on the Court's electronic database, I have presided over approximately 141 criminal cases charging violation of 8 U.S.C. § 1326 (titled "Reentry of removed aliens") and one criminal case charging violation of 8 U.S.C. § 1324 (titled "Bringing in and harboring certain aliens").

On October 15, 2021, I ran a Westlaw search, which showed that I have issued approximately 22 orders, falling generally into two types of cases: (1) habeas corpus cases filed by individuals, currently detained by the Immigration and Customs Enforcement, seeking an individualized bond hearing before an Immigration Judge; and (2) illegal reentry cases under 8 U.S.C. § 1326 where defendants collaterally challenged prior deportations. The Westlaw list of orders is attached.

I also had two cases involving claims against the United States Citizenship and Immigration Services. In one case I granted the government's motion for summary judgment. *See Fayad v. Keller*, No. 10–CV–03372–LHK, 2011 WL 884042 (N.D. Cal. March 14, 2011) (granting the government's motion for summary judgment because plaintiff did not yet "satisfy the residency requirement"). I dismissed the other case for failure to exhaust administrative remedies. *See Jariwala v. Napolitano*, No. 10–CV–04383–LHK, 2011 WL 1260228 (N.D. Cal. Apr. 4, 2011) (granting government's motion to dismiss for lack of subject matter jurisdiction).

I also dismissed one case because I lacked jurisdiction to hear a habeas petition because it sought review of a final order of removal. *See Rosales v. Aitken*, No. 11–CV–4246–LHK, 2011 WL 4412654 (N.D. Cal. Sept. 21, 2011) (dismissing habeas petition for lack of jurisdiction over final orders of removal).

32. How many immigration related cases have you heard during your time on the District Court?

a. Please provide a detailed breakdown of the number of cases heard and decided.

b. Please include information about the types of immigration issues you heard (such as removal, asylum, adjustment of status, etc.)

c. Please indicate the most notable immigration cases you heard, and the specifics about why these cases were so notable to you.

Response: Please see my response to Question 31.

33. For asylum related cases, how often were you presented with claims for asylum?

a. **Please provide a specific breakdown of the number of cases in which you ruled to grant asylum.**

b. **How did you evaluate these cases? Did it differ at all based on the type of asylum claim?**

c. **What is your understanding of the current asylum backlog, and what has been your experience with the backlog during your time on the District Court?**

Response: The Illegal Immigration Reform and Responsibility Act of 1996 divested district courts of jurisdiction over appeals of asylum rulings and vested jurisdiction exclusively in the courts of appeals. *See* 8 U.S.C. § 1252(a)(5). Thus, I have not presided over any asylum claims.

34. How often were you presented with removal cases?

a. **Please provide a specific breakdown of the number of cases in which you granted relief from removal.**

b. **How do you evaluate cases regarding removal?**

c. **Did you ever grant relief from removal for a criminal alien? Please provide a breakdown of the specific cases in which you granted relief for criminal aliens, and which crimes they were convicted or accused of including murders, sex crimes, drug trafficking, or violent crimes.**

Response: The Illegal Immigration Reform and Responsibility Act of 1996 divested district courts of jurisdiction over appeals of deportation and removal orders and vested jurisdiction exclusively in the courts of appeals. *See* 8 U.S.C. § 1252(a)(5).

In 2005, Congress eliminated district court habeas jurisdiction over final orders of deportation or removal, and vested jurisdiction exclusively in the courts of appeals. *See* 8 U.S.C. § 1252(b)(9).

Accordingly, when a habeas petitioner asked me to review his removal order, I dismissed the case for lack of jurisdiction as set forth in my response to Question 31. *See Rosales v. Aitken*, No. 11–CV–4246–LHK, 2011 WL 4412654 (N.D. Cal. Sept. 21, 2011) (dismissing habeas petition for lack of jurisdiction over final orders of removal).

35. How often have you heard cases related to *Zadvydas v. Davis*?

Response: As the Ninth Circuit recently explained, "in *Zadvydas*, the Court considered a federal habeas challenge to detention pursuant to § 1231(a)(6) brought by aliens with criminal convictions whom the government had detained beyond § 1231(a)(2)'s initial

90-day mandatory detention period." *Aleman Gonzalez v. Barr*, 995 F.3d 762, 769 (9th Cir. 2020) (citing *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001)). Rejecting the government's construction of the statute, the United States Supreme Court stated that "[w]hen removal is no longer reasonably foreseeable, § 1231(a)(6) no longer authorizes continued detention." *Id.* The United States Supreme Court established that six months was a reasonable time period for detention "for the sake of uniform administration of federal courts." *Zadvydas*, 533 U.S. at 731. "Although *Zadvydas* concerned only § 1231(a)(6), that decision led this court to 'grapple[ ] in piece-meal fashion with whether the various immigration detention statutes may authorize indefinite or prolonged detention of detainees and, if so, may do so without providing a bond hearing.'" *Aleman Gonzalez*, 955 F.3d at 770 (citation omitted) (alteration in original). Thus, in *Casas-Castrillon v. Dep't of Homeland Sec.*, the Ninth Circuit concluded that § 1226(a) requires a bond hearing and that "an alien is entitled to be released on bond unless the government establishes that he is a flight risk or will be a danger to the community." 535 F.3d 942, 951 (9th Cir. 2008) (internal quotation marks and citation omitted).

Under *Casas-Castrillon*'s construction of § 1226(a), I have heard approximately 7 habeas petitions seeking individualized bond hearings as set forth in my response to Question 31.

a. How have you evaluated *Zadyvdas* cases? What is your understanding of the current state of the law in these cases?

Response: As a United States District Judge I am bound by the Ninth Circuit's construction of the relevant statutes. *See, e.g.*, *Aleman Gonzalez v. Barr*, 995 F.3d 762, 769 (9th Cir. 2020) (explaining that the United States Supreme Court decision in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), did not affect *Casa-Castrillon*'s conclusion that bond hearings are mandated under 8 U.S.C. § 1226(a)).

b. How would you evaluate a *Zadyvdas* case if you were to join the Circuit Court?

Response: I would follow United States Supreme Court and Ninth Circuit precedent.

c. Do you believe that the current *Zadyvdas* jurisprudence threatens public safety?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. In addition, my personal views, if any, are irrelevant to interpreting and applying the law. I will follow United States Supreme Court and Ninth Circuit precedent.

36. I believe very strongly that sanctuary city policies are misguided and dangerous. It is incomprehensible that we should be releasing dangerous criminal aliens back into our communities. For many years we have seen sheriffs across our nation, including

some in the State of North Carolina, who have ignored the notification and detainer requests made by federal ICE agents. For example in 2019, Mecklenburg County's Sherriff in North Carolina ignored over 200 detainer requests. These reckless actions have led to criminal aliens being released back into our communities and jeopardizing public safety.

a. How often have you encountered cases involving sanctuary city policies? How have you ruled in cases either supporting or challenging sanctuary policies?

Response: One case was originally assigned to me, but United States District Judge William Orrick found that my case was related to his earlier filed case, so my case was immediately reassigned to Judge Orrick. I did not issue any rulings in the case.

b. Do you agree that sanctuary city policies are a threat to public safety, and that it is unwise for sheriffs to ignore detainer requests which release criminal aliens back into our communities? If not, why?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. In addition, my personal views, if any, are irrelevant to interpreting and applying the law. I will follow United States Supreme Court and Ninth Circuit precedent.

c. Do you agree that Congress has the right to put in place a law which would give victims of sanctuary city policies the right to sue sanctuary jurisdictions for creating the conditions which enabled a crime?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. In addition, my personal views, if any, are irrelevant to interpreting and applying the law. I will follow United States Supreme Court and Ninth Circuit precedent.

d. If Congress did pass such a law, how would you evaluate the contours of this law, and ensure that victims of sanctuary city policies are protected?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. I would follow United States Supreme Court and Ninth Circuit precedent.

37. Is it your understanding of the law that the federal government has the authority to enforce federal law in areas, like immigration, which are solely federal in nature? If not, please explain why.

Response: In *Arizona v. United States*, the United States Supreme Court explained that "[t]he federal power to determine immigration policy, is well settled." 567 U.S. 387, 395

(2012) (holding that certain Arizona state laws were preempted because the statutes "conflict[ed] with federal immigration law and its objectives").

38. The Biden Administration has shown a willingness to use executive authority to expand pathways for illegal immigrants to gain status.

a. How much authority does the executive branch alone have to set immigration enforcement policy?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. I would follow United States Supreme Court and Ninth Circuit precedent.

b. How should the Courts respond when considering cases of the executive branch providing pathways to status for certain populations? Please list specific cases and why they should be considered.

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. I would follow United States Supreme Court and Ninth Circuit precedent.

First Amendment Issues

39. During the COVID-19 pandemic, Americans have needed their faith and the support that comes with their faith communities more than ever. However, some governors have prohibited faith communities from gathering to worship. In many cases, the restrictions on religious gatherings have been much stricter that the requirements to go to the local Walmart.

a. How many cases have you heard which related to COVID-19 restrictions on the right to worship? Please be specific about the number of cases and the outcome of these cases.

b. How have you evaluated these cases during your time as a District Court Judge? Would you evaluate these cases any differently if you were confirmed as a Circuit Court Judge? If so, how?

Response: I have heard only one case related to COVID-19 restrictions. In *Tandon v. Newsom*, 517 F. Supp. 3d 922 (N.D. Cal. 2021), individuals who wanted to hold bible studies, musical prayer, collective prayer, and theological discussions in their homes challenged the California government's restrictions prohibiting all gatherings inside the home and limiting outdoor gatherings at the home to three households during the widespread tier of the COVID-19 transmission under the Free Exercise Clause of the First Amendment. My ruling was initially affirmed by the Ninth Circuit, *Tandon v. Newsom*, 992 F.3d 916 (2021), but was subsequently reversed by the United States Supreme Court, *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). I will fully and faithfully follow the United States Supreme Court's decision.

Although I understand that the United States Supreme Court's decision in *Tandon* is binding, I offer this explanation of my ruling in order to respond to your question. At the time I issued my ruling, the Ninth Circuit's decision in *S. Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128, 1142-43 (9th Cir. 2021), established a multi-factor test for determining whether a COVID-19 restriction is narrowly tailored and survives strict scrutiny.

Applying that multi-factor test, I found that the government restrictions on all private gatherings at the home were narrowly tailored and survived strict scrutiny. *Id.* at 970-71. Because I also found that these restrictions on all private gatherings (religious or secular) were "neutral and generally applicable," I found that these restrictions also survived rational basis review. *Id.* at 975-77.

In *Tandon*, 141 S. Ct. at 1296, the United States Supreme Court clarified 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." *Id.* "It is no

answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon*, the United States Supreme Court also clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* "Comparability is concerned with the risks various activities pose, not the reasons why people gather" to engage in those activities. *Id.*

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

I will follow the United States Supreme Court precedent as a United States District Judge and if confirmed, as a Ninth Circuit Judge.

40. If you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?

Response: I will follow the United States Supreme Court precedent.

41. Is there a difference between Americans' right to assemble and participate in peaceful protest and their right to practice their religion?

Response: The United States Supreme Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others." *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). The right to assemble and participate in peaceful protest is a part of the right of association. Protests, "if peaceful and orderly, fall[] well within the sphere of conduct protected by the First Amendment." *Gregory v. Chicago*, 394 U.S. 111, 112 (1969); *accord Edwards v. South Carolina*, 372 U.S. 229, 234 (1963).

The right to practice one's religion, otherwise known as the right to free exercise, makes unconstitutional laws that "discriminate against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of Lakumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

42. Is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected?

Response: Yes. In the context of the First Amendment, the United States Supreme Court has held that "[w]hen clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious. Equally obvious is that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940).

a. If you agree there is a line, what is the line between a protected First Amendment peaceful protest and where activity becomes an unprotected riot?

Response: The United States Supreme Court has drawn the line between protest and riot when "clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears." *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940). That said, States may not "unduly suppress free communication of views." *Id.*

b. Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?

Response: I would follow United States Supreme Court and Ninth Circuit precedent on these issues and all other issues.

43. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit to protecting the Religious Freedom Restoration Act's protection for Americans of all faiths?

Response: If confirmed, I will faithfully interpret and apply all federal statutes, including the Religious Freedom Restoration Act.

44. How many cases have you heard or decided where there was a First Amendment claim? Please be specific about the number of cases and their disposition.

Response: On October 14, 2021 I ran a Westlaw search, which showed that I have issued 45 orders that appear to relate to the First Amendment. A list of these orders is attached.

a. In how many cases did you rule in favor of First Amendment rights compared to those in which you ruled in favor of restricting those rights?

Response: Please see my response to Question 44.

b. In those cases, did you rule any differently in cases regarding freedom of speech compared to cases related to freedom of religion? If so, explain why you ruled differently in those cases.

Response: In all First Amendment cases, I applied United States Supreme Court and Ninth Circuit precedent.

c. How do evaluate First Amendment cases? Please be specific based on the freedom of religion, freedom of speech, or freedom of assembly.

Response: Like all cases that come before me, I carefully consider the facts and the parties' arguments then apply United States Supreme Court and Ninth Circuit precedents. For example, in the context of freedom of religion First Amendment claims I consider the following:

In *Employment Division, Department of Human Resources of Oregon v. Smith*, the United States Supreme Court held that a law which incidentally burdens religion ordinarily is not subject to strict scrutiny under the Free Exercise Clause if the law is neutral and generally applicable. 494 U.S. 872, 878-82 (1990). If a law is neutral and generally applicable, rational basis scrutiny applies. *Id.*

Determining whether a law is neutral and generally applicable requires a two-part analysis. In turn, each part requires two steps.

First, a court must determine whether a law is neutral. That determination requires two steps. The first step asks whether the law is facially neutral. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S 520, 533-34 (1993). If the law is not facially neutral, the law is subject to strict scrutiny. *Id.* If the law is facially neutral, then the court must proceed to the second step. *Id.* at 534 ("Facial neutrality is not determinative.").

The second step asks whether the facially neutral law's enactment or enforcement was motivated by religious animus on the part of the governmental actor. A facially neutral law whose enactment or enforcement was motivated by religious animus is subject to strict scrutiny. Courts must review the record to determine whether there is any evidence of religious animus. *Lukumi*, 508 U.S. at 534-42 (facially neutral city ordinances were non-neutral because they were prompted by concern for Santeria religious practices). In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the United States Supreme Court held that the government's application of a facially neutral public accommodations law violated the Free Exercise Clause because hostile statements by officials in public meetings showed that the application of the law was motivated by religious animus. *Id.* at 1729-31 (2018) (finding open expressions of hostility by state civil rights commissioners sufficient to show animus).

Second, a court must determine whether a law is generally applicable. That determination also requires two steps. The first step asks whether any exemptions to the

law invite "the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). If the law makes such an invitation, the law is not generally applicable and is subject to strict scrutiny. If the law does not make such an invitation, then the court must proceed to the second step.

The second step asks whether the law is overbroad and underinclusive such that it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 141 S. Ct. at 1877. To determine whether a restriction is overbroad and underinclusive, courts must compare religious conduct with comparable secular conduct. *See Lukumi*, 508 U.S. at 544-45. In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the United States Supreme Court clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* at 1296. Specifically, in *Tandon*, the Court held that, where a regulation prohibits activities because they are risky, "[c]omparability is concerned with the risks various activities pose, not the reasons why people gather" to engage in those activities. *Id.*

In *Tandon*, the United States Supreme Court also clarified 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." *Id.* The Court explained that "[i]t is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

However, not every application of "a valid and neutral law of generally applicability is necessarily constitutional under the Free Exercise Clause." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 n.2 (2017). For example, the United States Supreme Court has found a ministerial exception to Title VII employment discrimination laws. *See, e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) (holding that Title VII's prohibition on employment discrimination does not apply to churches when they hire or fire ministers); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) (precluding two lay teachers who instructed students in religious studies and prepared students for participation in Church services from pursuing Title VII employment discrimination suits against religious schools).

d. If confirmed, will you continue to evaluate First Amendment cases in the same way you do as a District Court Judge? Or will you evaluate and rule on cases any differently?

Response: I will continue to faithfully apply United States Supreme Court and Ninth Circuit precedent.

Law Enforcement

45. In 2020, 47 law enforcement officers were murdered by criminals. In 2021, there have already been 59 law enforcement officers killed by criminals. The shocking calls to "defund the police" continue to devalue and dehumanize our brave men and women in blue. This is dangerous and it is unacceptable.

a. How many cases have you heard related to violence against law enforcement offices? Please be specific about the charges and the outcome of these cases.

Response: On October 14, 2021, I ran a Westlaw search to determine whether I had issued any orders in any such cases. The search did not result in any orders. To the best of my recollection, I have not presided over any such cases.

b. What was the average sentence you imposed on criminals who assaulted or killed law enforcement officers? What aggravating and mitigating factors did you consider when determining their sentences?

Response: Please see my response to Question 45(a).

c. Are there any notable cases you would like to point to where you sentenced a criminal who assaulted and killed a law enforcement officer?

Response: Please see my response to Question 45(a).

46. Do you believe that federal law currently goes far enough to punish those who assault law enforcement officers?

Response: Whether federal law adequately punishes those who assault law enforcement officers is an important issue for the executive and legislative branches to consider. As a United States District Judge, when imposing any criminal sentence, I follow United States Supreme Court and Ninth Circuit precedent; comply with the Federal Rules of Criminal Procedure; consider the factors set forth in 18 United States Code § 3553, the United States Sentencing Guidelines, the United States Probation Office's Pre-Sentence Investigation Report, the parties' sentencing memoranda, all the statements and arguments made at the sentencing hearing, and the record in the case.

47. Do you believe that the sentencing guidelines go far enough to punish those who assault and killed law enforcement officers? Please explain why or why not.

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. In addition, my personal views, if any, are irrelevant to interpreting and applying the law.

48. What have you done as a District Court Judge to support the brave men and women in blue who protect our communities? If you are confirmed, what specific actions will you take to support the law enforcement community?

Response: As a United States District Judge, I faithfully interpret and apply the law.

49. As a member of the criminal justice system, you should know the importance of adequate and appropriate funding. These deeply offensive calls to "defund the police" would have wide-ranging impacts in our criminal justice system writ-large.

a. Do you agree that efforts to "defund the police" would negatively impact public safety?

Response: How police departments are funded is an important issue for the executive and legislative branches of government to consider.

b. If these radical voices were successful and police were defunded, what would be the impact on your work as a judge?

Response: I could not speculate. How police departments are funded and how government resources are used are important issues for the executive and legislative branches of government to consider.

c. How specifically would reducing resources to police impact what cases are heard in your courtroom and the ability of prosecutors to go after dangerous criminals? Do you believe this would allow for more dangerous criminals to be on the streets?

Response: I could not speculate. How police departments are funded and how government resources are used are important issues for the executive and legislative branches of government to consider.

50. Qualified immunity is one of the most important legal protections available to our law enforcement community so that they are able to do their jobs and stay safe.

a. How many cases have you heard as a District Court Judge which involved a claim of qualified immunity by a law enforcement office or official?

Response: On October 14, 2021, I conducted a Westlaw search, which showed that I have issued 132 orders that appear to relate to qualified immunity and law enforcement. A list of the orders is attached.

b. What was the outcome in these cases? Be specific about the number of cases in which you ruled in favor or against providing qualified immunity protection.

Response: Please see my response to Question 50(a).

c. What is your process for considering cases of qualified immunity, and when must the court grant qualified immunity to law enforcement offices and officials?

Response: Under United States Supreme Court precedent, "officers are entitled to qualified immunity under [42 U.S.C.] § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). For a law enforcement officer's conduct to violate a "clearly established" federal right, "existing law must have placed the constitutionality of the officer's conduct to be 'beyond debate.'" *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). All officers "but the plainly incompetent or those who knowingly violate the law" are protected by qualified immunity. *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

d. Will you follow the same process for considering qualified immunity cases if you are confirmed as a Circuit Court Judge?

Response: Yes.

Cybersecurity

51. Cybercrimes and cyber-attacks are becoming more and more frequent. To combat future cyberattacks, we need a coordinated, whole-of-government approach to this important issue, including engagement from the judicial system.

a. How many cases have you heard which related to the prosecution of cybercriminals?

Response: To the best of my knowledge, I have presided over seven cases relating to the prosecution of computer fraud and abuse.

b. What legal tools are prosecutors currently using to target cybercriminals?

Response: Based on the cases before me, the indictments charge violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030.

52. Do you believe that current laws and current sentencing guidelines sufficiently cover cybercrimes?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. In addition, my personal views, if any, are irrelevant to interpreting and applying the law.

a. As a District Court Judge, have you seen examples of where cybercriminals have been able to avoid prosecuting or receive leniency because our laws do not sufficiently cover their actions? Please provide specific examples of cases where this was the case.

Response: As a United States District Judge, I preside only over cases assigned to me and am not aware of what cases prosecutors choose not to file.

53. Do you have any other notable knowledge or experience with cybersecurity or cybercrime issues which you would apply if confirmed as a Circuit Court Judge?

Response: No.

International Parental Child Abduction

54. I have a specific interest in the issue of international parental child abduction, where one parent will unlawfully kidnap an American citizen child to another country. Many of these countries often refuse to return the children. This practice is devastating to left-behind parents, who must navigate international law to get their children returned.

a. How many cases of international parental child abduction have you heard as a District Court Judge?

Response: To the best of my recollection, I have not presided over any such cases.

b. What is the average sentence you have imposed on those convicted of IPCA crimes?

Response: To the best of my recollection, I have not presided over any such cases.

Victims' Rights

55. I am deeply concerned about the rights of crime victims, and ensuring that they have their day in court and receive proper compensation. What specific actions have you taken as a judge to ensure crime victims' rights?

Response: As a United States District Judge, I comply with the federal statutory provisions regarding crime victims' rights, such as ensuring that crime victims can exercise their "right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding." 18 U.S.C. § 3771(a)(4).

56. How many cases have you heard during your time as a District Court Judge which involved the rights of victims of crime? What was the outcome in these types of cases, and how did you evaluate their claims?

Response: To the best of my recollection, I have not presided over any crime victim's lawsuit against a criminal defendant. In my criminal cases, I order defendants to make restitution payments to victims and to have no contact with victims during the defendants' term of supervised release.

57. What work have you done inside and outside the courtroom to support crime victims? How will you support crime victims if you are confirmed to be a Circuit Court Judge?

Response: As a United States District Judge, I am fair and impartial to all parties and persons who appear before me. According to the Victims' Rights and Restitution Act, 34 U.S.C. § 20141, federal law enforcement officials are tasked with informing victims of places where they may receive medical and social services; informing victims of any restitution or other relief to which the victim may be entitled; informing victims of public and private programs that can provide victims counseling, treatment, and other support; assisting the victim with contacting services that could help the victim; arranging for the victim to receive protection from suspected offenders; and providing notice to the victim about the status of the investigation and prosecution of the suspected offenders, along with other helpful services. In the Northern District of California, the United States Attorney's Office's Victim Witness Advocates Office provides these services to crime victims.

Citing References (15)

Title	Date	NOD Topics	Type
1. **UNITED STATES OF AMERICA, Plaintiff, v. MANUEL CEJA-MELCHOR, Defendant.** 2021 WL 3616777, *1+ , N.D.Cal. On April 8, 2020, the Court granted Defendant Manuel Ceja-Melchor's ("Defendant") motion to dismiss Defendant's 8 U.S.C. § 1326 indictment. ECF No. 33. Before the Court is the...	Aug. 16, 2021	—	Case
2. **United States v. Ceja-Melchor** 445 F.Supp.3d 157, 157+ , N.D.Cal. IMMIGRATION — Jurisdiction. Notices of hearing that included address of Immigration Court failed to remedy jurisdictional defect resulting from defective notice to appear.	Apr. 08, 2020	73a. Date and location notice requirements, practice and procedure	Case
3. **United States v. Nunez-Romero** 2020 WL 1139642, *1+ , N.D.Cal. Before the Court is Defendant Luis Nunez-Romero's ("Defendant") motion to dismiss the indictment for illegal reentry following deportation in violation of 8 U.S.C. § 1326. ECF No....	Mar. 09, 2020	—	Case
4. **United States v. Rosas-Ramirez** 424 F.Supp.3d 758, 759+ , N.D.Cal. IMMIGRATION — Deportation or Removal. Lack of jurisdiction was not cured by defendant's actual notice of address of Immigration Court or his physical presence at removal hearing.	Nov. 26, 2019	73. Notice to alien, practice and procedure	Case
5. **United States v. Rosas-Ramirez** 2019 WL 2617096, *1+ , N.D.Cal. Before the Court is Defendant Antonio Rosas-Ramirez's ("Defendant") motion to dismiss the indictment for illegal reentry following deportation in violation of 8 U.S.C. § 1326 as to...	June 26, 2019	—	Case
6. **United States v. Aguilar-Castaneda** 2019 WL 2603300, *1+ , N.D.Cal. Before the Court is Defendant Juan Aguilar-Castaneda's motion to dismiss Plaintiff United States' ("government") indictment for illegal reentry following deportation in violation...	June 25, 2019	—	Case
7. **United States v. Zuniga-Ramirez** 2019 WL 2548791, *1+ , N.D.Cal. Before the Court is Defendant Armando Zuniga-Ramirez's ("Defendant") motion to dismiss the indictment for illegal reentry following deportation in violation of 8 U.S.C. § 1326. ECF...	June 20, 2019	—	Case
8. **United States v. Rosas-Ramirez** 2019 WL 1518162, *1+ , N.D.Cal. On February 4, 2019, the Court denied Defendant Antonio Rosas-Ramirez's ("Defendant") motion to dismiss Defendant's 8 U.S.C. § 1326 indictment. ECF No. 23 ("2/4/19 Order")....	Apr. 08, 2019	—	Case
9. **United States v. Rojas-Osorio** 381 F.Supp.3d 1216, 1217+ , N.D.Cal. IMMIGRATION — Deportation or Removal. Defendant identified some evidentiary basis on which voluntary departure relief could have been granted in his prior removal proceedings.	Apr. 05, 2019	97a. ---- Duty to inform, collateral attack, practice and procedure 98a. ---- Notice deficiencies, collateral attack, practice and procedure	Case

List of 15 Citing References for § 1326. Reentry of removed aliens

Title	Date	NOD Topics	Type
10. United States v. Pineda-Rodriguez 2019 WL 1370359, *1+ , N.D.Cal. Before the Court is Defendant Salvador Heriberto Pineda-Rodriguez's ("Defendant") motion to dismiss the indictment for illegal reentry following deportation in violation of 8...	Mar. 26, 2019	—	Case
11. United States v. Rosas-Ramirez 2019 WL 428783, *1+ , N.D.Cal. Before the Court is Defendant Antonio Rosas-Ramirez's ("Defendant") motion to dismiss the indictment for illegal reentry following deportation in violation of 8 U.S.C. § 1326. ECF...	Feb. 04, 2019	—	Case
12. United States v. Rojas Osorio 2019 WL 235042, *3+ , N.D.Cal. Before the Court is Defendant Jorge Arturo Rojas-Osorio's motion to dismiss indictment, filed on November 2, 2018. ECF No. 32 ("Mot."). In the motion, Defendant seeks to dismiss...	Jan. 16, 2019	—	Case
13. United States v. Rojas Osorio 2018 WL 6069935, *1+ , N.D.Cal. Before the Court is Defendant Jorge Arturo Rojas-Osorio's motion to withdraw guilty plea, filed on October 23, 2018. ECF No. 29 ("Mot."). The government opposed on November 2,...	Nov. 20, 2018	—	Case
14. United States v. Ramirez 2018 WL 424358, *2+ , N.D.Cal. Defendant Jose Bernal Ramirez ("Defendant") filed a Motion to Dismiss Indictment Due to Unlawful Deportation on November 1, 2017. ECF No. 22 ("Mot."). In the motion, Defendant...	Jan. 16, 2018	—	Case
17. United States v. Cortez-Ruiz 225 F.Supp.3d 1093, 1093+ , N.D.Cal. CRIMINAL JUSTICE — Immigration. Indictment charging alien defendant with illegal reentry warranted dismissal on ground that deportation on which indictment was based was invalid.	Dec. 02, 2016	88. ---- Prior convictions, defenses, practice and procedure	Case

List of 7 results for adv: "bond hearing"

1. Cruz-Zavala v. Barr
United States District Court, N.D. California, San Jose Division. | April 17, 2020 | 445 F.Supp.3d 571 | 2020 WL 1904469

IMMIGRATION — Bonds. Alien was entitled to constitutionally compliant bond hearing in removal proceedings.

Synopsis
Background: Alien filed petition for writ of habeas corpus, challenging his prolonged detention by Immigration and Customs Enforcement (ICE) during his removal proceedings, and he moved for temporary restraining order (TRO) seeking immediate release, or, alternatively, to secure his immediate release pending bond hearing.
Holding: The District Court, Lucy H. Koh, J., held that alien was entitled to constitutionally compliant bond hearing.
Petition granted in part and denied in part, and motion denied.

...TEMPORARY RESTRAINING ORDER Re: Dkt. Nos. 1, 5 LUCY H. KOH , United States District Judge On March 29, 2020, Petitioner Walter...

2. Cruz-Zavala v. Garland
United States District Court, N.D. California, San Jose Division. | March 29, 2021 | Slip Copy | 2021 WL 1192376

Before the Court is Petitioner Walter Cruz-Zavala's ("Petitioner") petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1 ("Pet."). Petitioner is a native of El Salvador who is currently in civil immigration custody. See Pet. ¶¶ 9, 33. Petitioner named as Respondents William P. Barr,...

...WRIT OF HABEAS CORPUS Re: Dkt. No. 1 LUCY H. KOH , United States District Judge Before the Court is Petitioner Walter...

3. Villalta v. Sessions
United States District Court, N.D. California, San Jose Division. | October 02, 2017 | Not Reported in Fed. Supp. | 2017 WL 4355182

On September 18, 2017, Petitioner Moises Alexander Villalta ("Petitioner") filed, through counsel, a petition for writ of habeas corpus under 28 U.S.C. §2241. See ECF No. 1 ("Petition"). Petitioner is a native and citizen of El Salvador who is currently detained in Immigration and Customs Enforcement...

...TEMPORARY RESTRAINING ORDER Re: Dkt. Nos. 1, 6 LUCY H. KOH , United States District Judge On September 18, 2017, Petitioner Moises...

4. Birru v. Barr
United States District Court, N.D. California, San Jose Division. | April 16, 2020 | Slip Copy | 2020 WL 1899408

List of 7 results for adv: "bond hearing"

On March 31, 2020, Petitioner Aylaliya Assefa Birru (“Petitioner”) filed a first amended petition for writ of habeas corpus under 28 U.S.C. § 2241. See ECF No. 4 (“Pet.”). Petitioner is a native of Ethiopia who is currently detained in Immigration and Customs Enforcement (“ICE”) custody. See Pet....

...TEMPORARY RESTRAINING ORDER Re: Dkt. Nos. 4, 5 LUCY H. KOH , United States District Judge On March 31, 2020, Petitioner Aylaliya...

5. Birru v. Barr

United States District Court, N.D. California, San Jose Division. | April 17, 2020 | Slip Copy | 2020 WL 1905581

On March 31, 2020, Petitioner Aylaliya Assefa Birru (“Petitioner”) filed a first amended petition for writ of habeas corpus under 28 U.S.C. § 2241. See ECF No. 4 (“Pet.”). Petitioner is a native of Ethiopia who is currently detained in Immigration and Customs Enforcement (“ICE”) custody. See Pet....

...has been vacated. Re: Dkt. Nos. 4, 5 LUCY H. KOH , United States District Judge On March 31, 2020, Petitioner Aylaliya...

6. Cruz v. Sessions

United States District Court, N.D. California, San Jose Division. | November 18, 2018 | Not Reported in Fed. Supp. | 2018 WL 6047287

On October 11, 2018, Petitioner Ricardo Vasquez Cruz (“Petitioner”) filed a petition for writ of habeas corpus under 28 U.S.C. §2241. See ECF No. 1 (“Petition”). Petitioner is a native and a citizen of El Salvador who is currently detained in Immigration and Customs Enforcement (“ICE”) custody. See...

...TEMPORARY RESTRAINING ORDER Re: Dkt. Nos. 1, 2 LUCY H. KOH , United States District Judge On October 11, 2018, Petitioner Ricardo...

7. Vasquez Cruz v. Barr

United States District Court, N.D. California, San Jose Division. | November 26, 2019 | Slip Copy | 2019 WL 6327576

On August 22, 2019, Petitioner Ricardo Vasquez Cruz (“Petitioner”) filed a verified petition for writ of habeas corpus under 28 U.S.C. § 2241. See ECF No. 1 (“Pet.”). Petitioner is a native and a citizen of El Salvador who is currently detained in Immigration and Customs Enforcement (“ICE”) custody. See Pet....

...TEMPORARY RESTRAINING ORDER Re: Dkt. Nos. 1-1 LUCY H. KOH , United States District Judge On August 22, 2019, Petitioner Ricardo...

List of 77 results for adv: "copyright infringement"

1. Shropshire v. Canning
United States District Court, N.D. California, San Jose Division. | August 22, 2011 | 809 F.Supp.2d 1139 | 2011 WL 3667492

COPYRIGHTS - Music. Alleged act of infringement was not wholly extraterritorial to United States, as required to state claim under Copyright Act,

Synopsis
Background: Co-owner of copyright for holiday song “Grandma Got Run Over By A Reindeer” brought copyright infringement suit against alleged infringer. Defendant moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 plaintiff sufficiently alleged an act of copyright infringement that was not wholly extraterritorial to the United States, as required to state claim under Copyright Act, and
2 allegations stated claim under the Digital Millennium Copyright Act (DMCA).
Motion granted in part, and denied in part.

...DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT LUCY H. KOH , District Judge. “Grandma Got Run Over By A Reindeer” is...

2. Adobe Systems Incorporated v. Blue Source Group, Inc.
United States District Court, N.D. California, San Jose Division. | August 31, 2015 | 125 F.Supp.3d 945 | 2015 WL 5118509

ANTITRUST — Sales Practices. California's Unfair Competition Law reached distributor's conduct, even if distributor's sales of infringing products occurred outside California.

Synopsis
Background: Computer software developer brought action against competitors and distributors, alleging trademark infringement, false designation of origin, false or misleading advertising, unfair competition, trademark dilution, copyright infringement, and violation of unlawful, unfair, and fraudulent prongs of California's Unfair Competition Law (UCL). One distributor moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 distributor was subject to court's specific personal jurisdiction;
2 developer did not impermissibly lump together multiple defendants;
3 developer sufficiently alleged consumer confusion;
4 developer pled cause of action for false designation of origin, false or misleading advertising, and unfair competition under Lanham Act;
5 developer pled cause of action for trademark dilution under Lanham Act;
6 developer pled cause of action for copyright infringement;
7 UCL reached distributor's alleged conduct; and
8 developer pled theory of joint and several liability.
Motion denied.

...CO, for Defendant. ORDER DENYING MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff Adobe Systems Inc. (“Adobe”) brings...

3. Epikhin v. Game Insight North America
United States District Court, N.D. California, San Jose Division. | May 20, 2015 | Not Reported in Fed. Supp. | 2015 WL 2412357

Plaintiffs Evgeny Epikhin ("Epikhin") and Dmitri Redlikh ("Redlikh") (collectively, "Plaintiffs") bring suit against defendants Game Insight North America, Game Insight, and GIGL (collectively, "Game Insight") and Game Garden, LLC ("Game Garden") (together, with Game Insight,...

...DISMISS THIRD, FOURTH, AND SEVENTH CAUSES OF ACTION LUCY H. KOH , United States District Judge Plaintiffs Evgeny Epikhin ("Epikhin") and Dmitri...

4. Shropshire v. Canning

United States District Court, N.D. California, San Jose Division. | January 11, 2011 | Not Reported in F.Supp.2d | 2011 WL 90136

"Granma Got Run Over By A Reindeer" is a holiday song written by Randy Brooks in 1979 and performed by Elmo Shropshire and Patsy Trigg. In this copyright infringement suit, Plaintiff Elmo Shropshire claims that he co-owns the copyright to the musical composition of the song and that Defendant Aubrey Canning, Jr., who resides in eastern...

...for Plaintiff. ORDER GRANTING DEFENDANT'S MOTION TO DISMISS LUCY H. KOH , District Judge. "Granma Got Run Over By A Reindeer" is...

5. YZ Productions, Inc. v. Redbubble, Inc.

United States District Court, N.D. California, San Jose Division. | June 24, 2021 | --- F.Supp.3d ---- | 2021 WL 2633552

COPYRIGHTS — Online Services. Complaint failed to allege that online retailer had knowledge of infringing acts on its system required for contributory copyright infringement claim.

Synopsis
Background: Multimedia producer brought action against owner of e-commerce system for contributory copyright infringement, contributory trademark infringement, trade dress infringement, and unfair competition under California common law. Owner filed motion to dismiss for failure to state a claim.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 producer failed to adequately allege that owner had knowledge of third party's alleged infringing activity, as required for contributory copyright infringement claim;
2 producer failed to adequately allege that owner knew of acts of direct infringement, as required for contributory trademark infringement claim;
3 complaint failed to put owner on notice of producer's asserted trade dress, as required for trade dress infringement claim; and
4 producer failed to establish that owner was content provider or author of allegedly infringing content, thus, Communications Decency Act (CDA) immunity applied.
Motion granted.

...WITH LEAVE TO AMEND Re: Dkt. No. 29 LUCY H. KOH , United States District Judge YZ Productions, Inc. ("Plaintiff") sues Redbubble...

6. DFSB Kollective Co., Ltd. v. Tran
United States District Court, N.D. California, San Jose Division. | December 21, 2011 | Not Reported in F.Supp.2d | 2011 WL 6730678

Plaintiffs DFSB Kollective Co., Ltd. ("DFSB"), Jungle Entertainment, Woolim Entertainment, Afternoon Music Entertainment, Inc., Boohwal Entertainment, and Loverock Company (collectively "Plaintiffs"), move for default judgment against Defendant Kenny Tran d/b/a ihoneyjoo.com and ihoneydew.com ("Defendant" or "Tran"). For the reasons set forth...

...21, 2011. ORDER GRANTING MOTION FOR DEFAULT JUDGMENT LUCY H. KOH , District Judge. Plaintiffs DFSB Kollective Co., Ltd. ("DFSB"), Jungle Entertainment...

7. Epikhin v. Game Insight North America
United States District Court, N.D. California, San Jose Division. | November 11, 2015 | 145 F.Supp.3d 896 | 2015 WL 6957491

COPYRIGHTS — Software. Source codes and images from unrelated application were not bona fide copies of original work for purposes of obtaining copyright registration.

Synopsis
Background: Application game developers brought action against competitors alleging copyright infringement, fraud, and breach of contract. Competitors moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 registration prerequisite was not met, and
2 balance of factors weighed against court exercising supplemental jurisdiction over fraud and breach of contract claims.
Motion granted.

...for Defendants. ORDER GRANTING DEFENDANTS' MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiffs Evgeny Epikhin ("Epikhin") and Dmitri...

8. Art of Living Foundation v. Does 1-10
United States District Court, N.D. California, San Jose Division. | November 09, 2011 | Not Reported in F.Supp.2d | 2011 WL 5444622

Doe Defendant, specially appearing under the pseudonym "Skywalker," moves for relief from Magistrate Judge Lloyd's order denying his motion to quash a subpoena intended to discover his identity from third-party Internet Service Providers. Having considered the parties' briefing and oral arguments, the Court finds that Skywalker's First Amendment...

...NONDISPOSITIVE PRE–TRIAL ORDER RE: MOTION TO QUASH LUCY H. KOH , District Judge. Doe Defendant, specially appearing under the pseudonym "Skywalker...

9. Luxul Technology Inc. v. Nectarlux, LLC
United States District Court, N.D. California, San Jose Division. | January 26, 2015 | 78 F.Supp.3d 1156 | 2015 WL 352048

COPYRIGHTS — Jurisdiction. Plaintiff satisfied purposeful direction test for specific jurisdiction over nonresident defendants in suit for, inter alia, copyright infringement.

Synopsis
Background: Producer of energy efficient light emitting diode (LED) products brought action against sales representative, marketing consulting firm, and firm's principal, alleging false designation of origin and false advertising under Lanham Act, copyright infringement, unfair competition and false advertising under California law, breach of contract, breach of implied covenant of good faith and fair dealing, and account stated. Defendants moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 producer adequately pled Lanham Act claim for false designation of origin;
2 producer failed to adequately plead Lanham Act claim for false advertising;
3 producer adequately pled claim under unfair prong of California's Unfair Competition Law (UCL);
4 producer adequately pled copyright infringement claim;
5 producer adequately pled claims for breach of contract and breach of implied covenant of good faith and fair dealing;
6 producer adequately pled claim for account stated; and
7 producer satisfied test for court to exercise specific jurisdiction over nonresident defendants.
Motion granted in part and denied in part.

...PART MOTION TO DISMISS Re: Dkt. No. 21 LUCY H. KOH , United States District Judge Plaintiff Luxul Technology Inc. (“Plaintiff” or...

10. Michael Grecco Productions, Inc. v. Enthusiast Gaming, Inc.
United States District Court, N.D. California, San Jose Division. | December 08, 2020 | Slip Copy | 2020 WL 7227199

Before the Court is Plaintiff Michael Grecco Productions, Inc.’s (“Plaintiff”) renewed motion for default judgment. ECF No. 31. Having considered the parties’ submissions, the relevant law, and the record in this case, the Court GRANTS IN PART and DENIES IN PART Plaintiff's motion for default judgment. Plaintiff is a...

...MOTION FOR DEFAULT JUDGMENT Re: Dkt. No. 31 LUCY H. KOH , United States District Judge Before the Court is Plaintiff Michael...

11. Shropshire v. Canning
United States District Court, N.D. California, San Jose Division. | January 04, 2012 | Not Reported in F.Supp.2d | 2012 WL 13658

“Grandma Got Run Over By A Reindeer” is a holiday song, written by Randy Brooks in 1979, and performed by Elmo Shropshire (“Shropshire” or “Plaintiff”) and Patsy Trigg (“Trigg”). In this copyright infringement suit, Plaintiff claims that he co-owns the copyright to the musical composition of the song and that Defendant Aubrey Canning, Jr....

...DEFENDANT'S SECOND MOTION TO DISMISS SECOND AMENDED COMPLAINT LUCY H. KOH , District Judge. “Grandma Got Run Over By A Reindeer” is...

12. Michael Grecco Productions, Inc. v. Enthusiast Gaming, Inc.
United States District Court, N.D. California, San Jose Division. | May 18, 2021 | Slip Copy | 2021 WL 1979202

Plaintiff Michael Grecco Productions, Inc. ("Plaintiff") sued Defendant Enthusiast Gaming, Inc. ("Defendant") for copyright infringement. On December 8, 2020, the Court granted in part and denied in part Plaintiff's motion for default judgment. ECF No. 35. Before the Court is Plaintiff's motion for attorney's fees, ECF No....

...MOTION FOR ATTORNEY'S FEES Re: Dkt. No. 37 LUCY H. KOH , United States District Judge Plaintiff Michael Grecco Productions, Inc. ("Plaintiff...

13. Adobe Systems Incorporated v. Nwubah
United States District Court, N.D. California. | June 23, 2020 | Slip Copy | 2020 WL 3432639

Before the Court is Plaintiff Adobe Systems Incorporated's ("Plaintiff") motion for default judgment. ECF No. 45. Having considered the filings of Plaintiff, the relevant law, and the record in the instant case, the Court GRANTS Plaintiff's motion for default judgment. Plaintiff is a Delaware corporation with a principal place of...

...MOTION FOR DEFAULT JUDGMENT Re: Dkt. No. 45 LUCY H. KOH , United States District Judge Before the Court is Plaintiff Adobe...

14. Broadcast Music, Inc. v. Kiflit
United States District Court, N.D. California, San Jose Division. | October 02, 2012 | Not Reported in F.Supp.2d | 2012 WL 4717852

On April 11, 2012, the Clerk of the Court entered default against Defendant Tedros Kiflit, individually and doing business as Arsimona ("Defendant" or "Arsimona"), after Defendant failed to appear or otherwise respond to the Summons and Complaint in this case within the time prescribed by the Federal Rules of Civil Procedure. See ECF No. 10. Before...

...for Plaintiffs. ORDER GRANTING MOTION FOR DEFAULT JUDGMENT LUCY H. KOH , District Judge. On April 11, 2012, the Clerk of the...

15. Epikhin v. Game Insight North America
United States District Court, N.D. California, San Jose Division. | March 31, 2016 | Not Reported in Fed. Supp. | 2016 WL 1258690

Plaintiffs Evgeny Epikhin ("Epikhin") and Dmitri Redlikh ("Redlikh") (collectively, "Plaintiffs") sued Defendants Game Insight North America, Cooper Media Corp. d/b/a Game Insight, and Game Insight Global Limited d/b/a GIGL (collectively, "Game Insight") and Game Garden, LLC ("Game...

...ATTORNEY'S FEES AND COSTS Re: Dkt. No. 87 LUCY H. KOH , United States District Judge Plaintiffs Evgeny Epikhin ("Epikhin") and Dmitri...

16. Brocade Communications Systems, Inc. v. A10 Networks, Inc.

United States District Court, N.D. California, San Jose Division. | June 12, 2012 | 873 F.Supp.2d 1192 | 2012 WL 2150305

PATENTS - Computers and Electronics. Competitor's officers were not personally liable for inducing competitor's alleged infringement.

Synopsis
Background: Patentees brought action against competitor and several former employees, two of whom were competitor's officers, alleging that employees took their intellectual property with them to competitor, and competitor used their intellectual property to develop a competing product, which allegedly infringed several of their patents. Defendants moved for summary judgment.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 officers were not personally liable for inducing competitor's alleged infringement;
2 genuine issue of material fact existed as to whether competitor directly infringed patent directed to a system and method for providing network route redundancy across layer 2 devices;
3 genuine issue of material fact existed as to whether competitor directly infringed patent directed to providing redundancy support for network address translation (NAT) devices in the event of a failover;
4 genuine issue of material fact existed as to whether competitor directly infringed patent relating to global server load-balancing;
5 genuine issue of material fact existed as to whether competitor directly infringed patent directed to a system for global server load-balancing;
6 genuine issue of material fact existed as to whether competitor directly infringed patent directed to a system and method for protecting a central processing unit of a router against remote access attacks; and
7 genuine issues of material fact existed, precluding summary judgment on patentees' trade secret misappropriation claim under California's Uniform Trade Secrets Act (UTSA).
Motion granted in part and denied in part.

...DENYING IN PART A10'S MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , District Judge. On May 3, 2012, Defendants Lee Chen, Rajkumar...

17. Art of Living Foundation v. Does 1-10

United States District Court, N.D. California, San Jose Division. | May 01, 2012 | Not Reported in F.Supp.2d | 2012 WL 1565281

Plaintiff Art of Living Foundation ("Plaintiff" or "AOLF–US"), a California corporation and the United States branch of the international Art of Living Foundation based in Bangalore, India, brings this action for copyright infringement under 17 U.S.C. § 501 et seq., and misappropriation of trade secrets under California Civil Code § 3426 et seq.,...

...IN PART DEFENDANTS' SECOND SPECIAL MOTION TO STRIKE LUCY H. KOH , District Judge. Plaintiff Art of Living Foundation ("Plaintiff" or "AOLF...

18. Luxul Technology Inc. v. NectarLux, LLC

United States District Court, N.D. California, San Jose Division. | June 16, 2016 | Not Reported in Fed. Supp. | 2016 WL 3345464

Plaintiff and Counterdefendant Luxul Technology, Inc. (“Luxul”) moves for summary judgment and for sanctions against Defendants and Counterclaimants NectarLux LLC, JKenney Consulting, Inc., and James Keeney (collectively, “NectarLux”). ECF Nos. 85 (“Luxul Sanctions Mot.”), 94 (“Luxul Summ. J. Mot.”)....

...SANCTIONS Re: Dkt. Nos. 85, 92, 93, 94 LUCY H. KOH , United States District Judge Plaintiff and Counterdefendant Luxul Technology, Inc...

19. Brocade Communications Systems, Inc. v. A10 Networks, Inc.

United States District Court, N.D. California, San Jose Division. | August 16, 2011 | Not Reported in F.Supp.2d | 2011 WL 7762998

Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks, LLC (together, Brocade) filed an application for a temporary restraining order (TRO) based on alleged copyright infringement and trade secret theft by defendants (collectively, AIO). This matter was heard on August 12, 2011. For the reasons set forth below, this Motion is DENIED...

...Defendants. ORDER DENYING APPLICATION FOR TEMPORARY RESTRAINING ORDER LUCY H. KOH , District Judge. Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks...

20. Brocade Communications Systems Inc. v. A10 Networks Inc.

United States District Court, N.D. California. | August 16, 2011 | Not Reported in F.Supp.2d | 2011 WL 7563043

Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks, LLC (together, Brocade) filed an application for a temporary restraining order (TRO) based on alleged copyright infringement and trade secret theft by defendants (collectively, A10). This matter was heard on August 12, 2011. For the reasons set forth below, this Motion is DENIED...

...Ann Liroff , of Haight Brown & Bonesteel, San Francisco, for defendants. Koh , J. Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks, LLC...

21. Autodesk, Inc. v. Flores

United States District Court, N.D. California, San Jose Division. | January 31, 2011 | Not Reported in F.Supp.2d | 2011 WL 337836

COPYRIGHTS - Software. Permanent injunction preventing sellers of pirated software from infringing software company's copyrights in the future was warranted.

...ORDER GRANTING IN PART MOTION FOR DEFAULT JUDGMENT LUCY H. KOH , District Judge. Plaintiff Autodesk, Inc., moves for default judgment against...

22. Dei Gratia v. Stafford
United States District Court, N.D. California, San Jose Division. | January 23, 2015 | Not Reported in Fed. Supp. | 2015 WL 332633

Plaintiff Aubree Regina Dei Gratia, also known as Rosalie Guancione ("Plaintiff"), brings this action against Rodney J. Stafford, Judge of the Santa Clara County Superior Court, Jeffrey Rosen, District Attorney of the County of Santa Clara, and Alexis Causey, Deputy District Attorney of the County of Santa Clara (collectively,...

...CHANGE VENUE Re: Dkt. Nos. 28, 31, 205 LUCY H. KOH , District Judge Plaintiff Aubree Regina Dei Gratia, also known as...

23. Adlife Marketing & Communications Company, Inc. v. Popsugar, Inc.
United States District Court, N.D. California, San Jose Division. | March 26, 2020 | Slip Copy | 2020 WL 1478379

Before the Court is Plaintiff Adlife Marketing & Communications Company, Inc.'s ("Plaintiff") motion to dismiss with prejudice Plaintiff's own complaint alleging copyright infringement against Defendant Popsugar, Inc. ("Defendant"). ECF No. 45-1 ("Mot."); see also ECF No. 1 ("Compl."). For the...

...TO DISMISS WITH PREJUDICE Re: Dkt. No. 45 LUCY H. KOH , United States District Judge Before the Court is Plaintiff Adlife...

24. DiscoverOrg Data, LLC v. Bitnine Global, Inc.
United States District Court, N.D. California, San Jose Division. | November 09, 2020 | Slip Copy | 2020 WL 6562333

Plaintiff DiscoverOrg Data, LLC ("Plaintiff") moves for default judgment against Defendant Bitnine Global, Inc. ("Defendant"), ECF No. 24. Having considered Plaintiff's motion, the relevant law, and the record in this case, the Court hereby GRANTS IN PART and DENIES IN PART Plaintiff's motion for default judgment. Plaintiff...

...JUDGMENT PUBLIC REDACTED VERSION Re: Dkt. No. 24 LUCY H. KOH , United States District Judge Plaintiff DiscoverOrg Data, LLC ("Plaintiff") moves...

25. Song v. Drenberg
United States District Court, N.D. California, San Jose Division. | May 06, 2019 | Not Reported in Fed. Supp. | 2019 WL 1998944

Plaintiffs James Song, FaircapX, Inc., Mithrandir Inc. ("Mithrandir Labs"), and Faircap Angels, Inc. (collectively, "Plaintiffs") bring suit against Defendants Aaron Drenberg, Alexa Pettinari, and Mark Pettinari (collectively, "Defendants") alleging multiple causes of action that originate from a soured business...

...GRANTING MOTION TO DISMISS Re: Dkt. No. 27 LUCY H. KOH , United States District Judge Plaintiffs James Song, FaircapX, Inc., Mithrandir...

26. Brocade Communications Systems, Inc. v. A10 Networks, Inc.
United States District Court, N.D. California, San Jose Division. | March 23, 2011 | Not Reported in F.Supp.2d | 2011 WL 1044899

Defendants A10 Networks, Inc., Lee Chen, Rajkumar Jalan, Ron Szeto, and Steven Hwang (together, A10) move to dismiss various claims pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, this Motion is GRANTED in part and DENIED in part. On August 4, 2010, plaintiffs Brocade Communications Systems, Inc ., and Foundry...

...PART AND DENYING IN PART MOTION TO DISMISS LUCY H. KOH , District Judge. Defendants A10 Networks, Inc., Lee Chen, Rajkumar Jalan...

27. Erickson Productions, Inc. v. Kast
United States District Court, N.D. California, San Jose Division. | November 09, 2018 | Not Reported in Fed. Supp. | 2018 WL 5906076

Plaintiffs Erickson Productions, Inc. and Jim Erickson sued Defendant Kraig Kast for copyright infringement. Plaintiffs prevailed at trial and were awarded $450,000 in damages. Plaintiffs later moved to amend the judgment to add various corporate entities and trusts that Kast purportedly controlled. Plaintiffs also requested attorneys' fees and...

...STAYING CASE PENDING APPEALS Re: Dkt. No. 307 LUCY H. KOH , United States District Judge Plaintiffs Erickson Productions, Inc. and Jim...

28. Lynwood Investments Cy Limited v. Konovalov
United States District Court, N.D. California. | March 25, 2021 | Slip Copy | 2021 WL 1164838

Plaintiff Lynwood Investments CY Limited ("Lynwood") sues Defendants Maxim Konovalov; Igor Sysoev; Andrey Alexeev; Maxim Dounin; Gleb Smirnoff; Angus Robertson; F5 Networks, Inc.; NGINX, Inc. (BVI); NGINX Software, Inc.; E. Venture Capital Partners II LLC; Runa Capital, Inc.; BV NGINX, LLC; and NGINX, Inc. (DE) (collectively,...

...No. 20-CV-03778-LHK 03/25/2021 LUCY H. KOH , United States District Judge ORDER GRANTING MOTIONS TO DISMISS WITH...

29. Gorski v. The Gymboree Corporation
United States District Court, N.D. California, San Jose Division. | July 16, 2014 | Not Reported in Fed. Supp. | 2014 WL 3533324

Plaintiff Elektra Printz Gorski ("Gorski") alleges that Defendant The Gymboree Corporation ("Gymboree") infringed Gorski's registered copyright and registered trademark in Gymboree's marketing and sale of clothing featuring the phrase "lettuce turnip the beet." ECF No. 1 at 8–10. Before the...

...AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff Elektra Printz Gorski ("Gorski") alleges...

30. Roman v. United States

United States District Court, N.D. California, San Jose Division. | September 14, 2021 | Slip Copy | 2021 WL 4170763

Before the Court is a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, filed by Petitioner Leslie Roman ("Petitioner"), acting pro se. ECF No. 1 ("Mot."). Petitioner seeks to vacate, set aside, or correct his sentence in light of the United States Supreme Court's decision in Nelson v....

...Dkt. No. 717 (15-CR-00264-LHK-8) LUCY H. KOH , United States District Judge Before the Court is a motion...

31. Synopsys, Inc. v. InnoGrit, Corp.

United States District Court, N.D. California. | October 01, 2019 | Not Reported in Fed. Supp. | 2019 WL 4848387

Plaintiff Synopsys, Inc. ("Synopsys") brings this action against Defendants InnoGrit, Corp. ("InnoGrit") and Does 1–10. ECF No. 50 ("SAC"). Before the Court is InnoGrit's motion to dismiss the second amended complaint ("SAC"). ECF No. 52 ("Mot."). Having considered the submissions of...

...DEFENDANT'S MOTION TO DISMISS Re: Dkt. No. 52 LUCY H. KOH , United States District Judge Plaintiff Synopsys, Inc. ("Synopsys") brings this...

32. Lynwood Investments CY Limited v. Konovalov

United States District Court, N.D. California, San Jose Division. | March 30, 2021 | Slip Copy | 2021 WL 1198915

Plaintiff Lynwood Investments CY Limited ("Lynwood") sues Defendants Maxim Konovalov; Igor Sysoev; Andrey Alexeev; Maxim Dounin; Gleb Smirnoff; Angus Robertson; F5 Networks, Inc.; NGINX, Inc. (BVI); NGINX Software, Inc.; e.venture Capital Partners II LLC; Runa Capital, Inc.; BV NGINX, LLC; and NGINX, Inc. (DE) (collectively,...

...WITH LEAVE TO AMEND Re: Dkt. No. 106 LUCY H. KOH , United States District Judge Plaintiff Lynwood Investments CY Limited ("Lynwood...

33. AF Holdings LLC v. Does 1-135

United States District Court, N.D. California, San Jose Division. | March 27, 2012 | Not Reported in F.Supp.2d | 2012 WL 1038671

Before the Court is Plaintiff AF Holdings LLC's ("AFH") Response, ECF No. 37, to the Court's January 19, 2012 Order to Show Cause why this case should not be dismissed for failure to timely serve the Doe Defendants pursuant to Federal Rule of Civil Procedure 4(m), ECF No. 35. The Court held a hearing on the Order to Show Cause on February 22, 2012....

...TO FEDERAL RULE OF CIVIL PROCEDURE 4(M) LUCY H. KOH , District Judge. Before the Court is Plaintiff AF Holdings LLC's...

34. Michael Grecco Productions, Inc. v. Enthusiast Gaming, Inc.

United States District Court, N.D. California, San Jose Division. | July 22, 2020 | Slip Copy | 2020 WL 4207445

Before the Court is Plaintiff Michael Grecco Productions, Inc.'s ("Plaintiff") motion for default judgment. ECF No. 23. Because Plaintiff has not established that Defendant was properly served, the Court DENIES Plaintiff's motion for default judgment without prejudice. Plaintiff is a photography agency with its principal place of...

...DEFAULT JUDGMENT WITHOUT PREJUDICE Re: Dkt. No. 23 LUCY H. KOH , United States District Judge Before the Court is Plaintiff Michael...

35. Autodesk, Inc. v. Flores

United States District Court, N.D. California, San Jose Division. | May 18, 2011 | Not Reported in F.Supp.2d | 2011 WL 1884694

On January 31, 2011, the Court granted Plaintiff Autodesk, Inc.'s motion for default judgment against Defendants Guillermo Flores, Greg Flowers, and Gregorio Flores for copyright infringement, trademark infringement, false designation of origin, and violations of the circumvention technology provisions of the Digital Millennium Copyright Act...

...ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS LUCY H. KOH , District Judge. On January 31, 2011, the Court granted Plaintiff...

36. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | May 10, 2016 | Not Reported in Fed. Supp. | 2016 WL 2654410

On March 23, 2016, the defendants in this action filed pre-trial motions. See ECF Nos. 111, 112, 113, 114, 115, 116, 117, 119, 120, 121. The Government filed responses. ECF Nos. 124, 125, 126, 129, 130, 132, 133. The defendants filed replies. ECF Nos. 134, 135, 137, 138, 139, 140. This order addresses the motions contained in ECF Nos. 113, 114,...

...111, 113, 114, 116, 117, 119, 120, 121 LUCY H. KOH , United States District Judge On March 23, 2016, the defendants...

37. NetApp, Inc. v. Nimble Storage, Inc.
United States District Court, N.D. California, San Jose Division. | January 29, 2015 | Not Reported in Fed. Supp. | 2015 WL 400251

Plaintiff NetApp, Inc. ("NetApp") has filed this suit against Defendants Nimble Storage, Inc. ("Nimble"), and Michael Reynolds ("Reynolds") (collectively, "Defendants"). See ECF No. 71 (Second Am. Compl.). Defendants move to dismiss all the claims that NetApp asserts against Nimble and...

...MOTION TO DISMISS, AND GRANTING MOTION TO STRIKE LUCY H. KOH , District Judge Plaintiff NetApp, Inc. ("NetApp") has filed this suit...

38. Epikhin v. Game Insight North America
United States District Court, N.D. California, San Jose Division. | May 12, 2015 | Not Reported in Fed. Supp. | 2015 WL 2229225

Plaintiffs Evgeny Epikhin ("Epikhin") and Dmitri Redlikh ("Redlikh") (collectively, "Plaintiffs") bring suit against defendants Game Insight North America, Game Insight, and GIGL (collectively, "Game Insight") and Game Garden, LLC ("Game Garden") (together, with Game Insight,...

...for Defendants. ORDER GRANTING MOTION TO DISQUALIFY COUNSEL LUCY H. KOH , District Judge Plaintiffs Evgeny Epikhin ("Epikhin") and Dmitri Redlikh ("Redlikh...

39. United States v. Shayota
United States District Court, N.D. California, San Jose Division. | September 13, 2016 | Not Reported in Fed. Supp. | 2016 WL 4762274

Before the Court are separate motions to sever, filed by Defendant Camilo Rodriguez and Mario Ramirez. See ECF No. 212 ("Camilo Mot."); ECF No. 217 ("Mario Mot."). The Court finds these motions suitable for decision without oral argument and thus VACATES the motions hearing set for September 15, 2016, at 1:30 p.m. Having...

...REGARDING TRIAL GROUPING Re: Dkt. Nos. 212, 217 LUCY H. KOH , United States District Judge Before the Court are separate motions...

40. Factory Direct Wholesale, LLC v. iTouchless Housewares & Products, Inc.
United States District Court, N.D. California, San Jose Division. | October 23, 2019 | 411 F.Supp.3d 905 | 2019 WL 5423450

TRADEMARKS — Advertising. Seller on e-commerce platform stated claim for false advertising under Lanham Act against competitor.

Synopsis
Background: Seller on e-commerce platform brought action against competitor, alleging false advertising under Lanham Act, intentional interference with contract, intentional and negligent interference with prospective economic advantage, violations of California's Unfair Competition Law (UCL), and trademark infringement. Competitor moved to dismiss.

Holdings: The District Court, Lucy H. Koh, J., held that:
1 claim preclusion did not bar Lanham Act false advertising claim;
2 claim preclusion barred claim for violations of UCL;
3 claim preclusion barred tortious interference claims;
4 claim preclusion did not bar trademark infringement claim;
5 issue preclusion did not bar Lanham Act false advertising claim; and
6 seller stated claim for false advertising under Lanham Act.
Motion granted in part and denied in part.

...PART AND DENYING IN PART MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff Factory Direct Wholesale ("Plaintiff") sued...

41. USA v. Shayota

United States District Court, N.D. California, San Jose Division. | October 19, 2016 | Not Reported in Fed. Supp. | 2016 WL 6093238

Before the Court are Adriana Shayota and Joseph Shayota's motion, ECF No. 270 ("Shayota Mot."), and Mario Ramirez and Camilo Ramirez's motion, ECF No. 269 ("Ramirez Mot."), to exclude the Government's noticed co-conspirator statements. Having considered the parties' briefing, the relevant law, and the record in this case,...

...STATEMENTS Re: Dkt. Nos. 269, 270, 295, 312 LUCY H. KOH , United States District Judge Before the Court are Adriana Shayota...

42. Coheso, Inc. v. Can't Live Without It, LLC

United States District Court, N.D. California, San Jose Division. | December 18, 2017 | Not Reported in Fed. Supp. | 2017 WL 10434396

Plaintiff Coheso, Inc., dba MIRA Brands ("Plaintiff"), brings this action against Defendant Can't Live Without It, LLC, dba S'well Bottle ("Defendant"). Plaintiff seeks declaratory relief regarding Defendant's trade dress rights and cancellation of Defendant's trademark registrations. Defendant moves to dismiss for lack of...

...DENYING MOTION TO DISMISS Re: Dkt. No. 9 LUCY H. KOH , United States District Judge Plaintiff Coheso, Inc., dba MIRA Brands...

43. Benedict v. Hewlett–Packard Company

United States District Court, N.D. California, San Jose Division. | January 21, 2014 | Not Reported in Fed. Supp. | 2014 WL 234207

This Order addresses a motion for sanctions pursuant to Federal Rule of Civil Procedure 11 arising in the context of a class action lawsuit brought by Plaintiffs Eric Benedict, Richard Bowders, and Kilricanos Vieira, on behalf of themselves and classes of those similarly situated, against Defendant Hewlett–Packard Company ("HP")...

...SANCTIONS AGAINST HEWLETT–PACKARD AND HEWLETT–PACKARD'S COUNSEL LUCY H. KOH , United States District Judge This Order addresses a motion for...

44. Teeter-Totter, LLC v. Palm Bay International, Inc.

United States District Court, N.D. California, San Jose Division. | September 25, 2018 | 344 F.Supp.3d 1100 | 2018 WL 4660265

TRADEMARKS — Registration. Statement of alleged false date of first use in commerce in trademark applications did not constitute fraud which invalidated marks.

Synopsis
Background: Mark holder filed action against competitor alleging federal and state trademark infringement, federal and state unfair competition, common law trademark infringement, federal copyright infringement, cancellation of trademark registration, and inequitable conduct. Competitor filed counterclaims for a declaration of prior and superior trademark rights, cancellation of mark holder's design mark, and cancellation of word mark, U.S. design mark, and California design mark for fraud. Mark holder filed motion to dismiss cancellation counterclaims and requested attorney's fees.
Holdings: The District Court, Lucy H. Koh, D.J., held that:
1 assignment document was essentially a relinquishment of ownership rights rather than an assignment;
2 alleged assignment transferred all interests and thus did not violate Lanham Act's prohibition on assignment of intent-to-use applications; and
3 statement of alleged false date of first use in commerce in applications did not constitute fraud which invalidated marks.
Dismissed with leave to amend.

...AND THIRD AMENDED COUNTERCLAIMS Re: Dkt. No. 34 LUCY H. KOH , United States District Judge Plaintiff-Counterdefendant Teeter-Totter, LLC ("Teeter...

45. Art of Living Foundation v. Does

United States District Court, N.D. California, San Jose Division. | June 15, 2011 | Not Reported in F.Supp.2d | 2011 WL 2441898

It has long been settled that an author's decision to remain anonymous is an aspect of freedom of speech protected by the First Amendment. The right to speak anonymously, however, is not unlimited. This case centers on the contours of balancing the First Amendment rights of online authors' decisions to speak anonymously and critically of an...

...MOTION TO DISMISS AND DENYING MOTION TO STRIKE LUCY H. KOH , District Judge. It has long been settled that an author's...

46. United States v. Jamil

United States District Court, N.D. California, San Jose Division. | May 21, 2020 | Slip Copy | 2020 WL 2614877

Defendant Walid Jamil is currently in the custody of the Bureau of Prisons ("BOP") and incarcerated at the federal correctional institution in Morgantown, West Virginia ("FCI Morgantown"). Defendant Jamil moves for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A), also known as compassionate release....

...ORDER GRANTING COMPASSIONATE RELEASE Re: Dkt. No. 765 LUCY H. KOH , United States District Judge Defendant Walid Jamil is currently in...

47. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | May 26, 2020 | Slip Copy | 2020 WL 2733993

Defendant Joseph Shayota is currently in the custody of the Bureau of Prisons ("BOP") and incarcerated at the Federal Correctional Institution's minimum security camp in Florence, Colorado ("FCI Florence"). Defendant Shayota moves for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A), also known as...

...ORDER DENYING COMPASSIONATE RELEASE Re: Dkt. No. 763 LUCY H. KOH , United States District Judge Defendant Joseph Shayota is currently in...

48. Adobe Systems Incorporated v. Nwubah

United States District Court, N.D. California, San Jose Division. | December 05, 2019 | Slip Copy | 2019 WL 6611096

Before the Court is Plaintiff Adobe Systems Incorporated's ("Plaintiff") motion for default judgment. ECF No. 34. Having considered the filings of Plaintiff, the relevant law, and the record in the instant case, the Court DENIES Plaintiff's motion for default judgment without prejudice. Plaintiff is a Delaware corporation with a...

...DEFAULT JUDGMENT WITHOUT PREJUDICE Re: Dkt. No. 34 LUCY H. KOH , United States District Judge Before the Court is Plaintiff Adobe...

49. Brocade Communications Systems, Inc. v. A10 Networks, Inc.

United States District Court, N.D. California, San Jose Division. | January 09, 2012 | Not Reported in F.Supp.2d | 2012 WL 70428

Before the Court is Brocade's motion to compel forensic inspection of Ron Szeto's computer hard drives. ECF No. 424. The Court previously denied Brocade's requested relief at a case management conference held on December 19, 2011, but invited Brocade to file a motion for reconsideration. ECF No. 416. Pursuant to the Court's order, Brocade filed its...

...FORENSIC INSPECTION OF RON SZETO'S COMPUTER HARD DRIVES LUCY H. KOH , District Judge. Before the Court is Brocade's motion to compel...

50. Corley v. Google, Inc.

United States District Court, N.D. California, San Jose Division. | August 19, 2016 | 316 F.R.D. 277 | 2016 WL 4411820

E-COMMERCE — Privacy. Consumers' Wiretap Act claims against provider of e-mail service did not arise from same transaction or occurrence, as would warrant permissive joinder.

Synopsis
Background: Consumers brought actions against provider of e-mail service, alleging that provider violated the Wiretap Act by intercepting and scanning their e-mails to develop individual profiles for commercial purposes. Following mass joinder, provider moved to sever claims of individual consumers.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 consumers' claims did not arise from same transaction or occurrence;
2 permissive joinder of 879 consumers would cause significant prejudice to provider;
3 permissive joinder would be impractical;
4 permissive joinder would result in unjustified burden on judicial resources; and
5 severance, rather than dismissal, was proper remedy for misjoinder.
Motion granted.

...Dkt. No. 20 (No. 16-CV-02553-LHK) LUCY H. KOH , United States District Judge Plaintiffs in these cases, Corley v...

51. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | October 21, 2016 | Not Reported in Fed. Supp. | 2016 WL 8732803

Before the Court are the Government's Motion Regarding Witness Unavailability, ECF No. 303 ("Gov't Mot."), and Defendants Mario and Camilo Ramirez's (the "Ramirez defendants'") objections concerning the unavailability of witnesses, ECF No. 319, 321. On May 14, 2015, a federal grand jury returned a three-count Indictment...

...CONCERNING WITNESS UNAVAILABILITY Re: Dkt. Nos. 303, 323 LUCY H. KOH , United States District Judge Before the Court are the Government's...

52. Ben Chang v. Biosuccess Biotech, Co.

United States District Court, N.D. California, San Jose Division. | May 30, 2014 | Not Reported in Fed. Supp. | 2014 WL 12703706

Before the Court is Defendants' motion to transfer. See ECF No. 24. The motion has been fully briefed. See ECF Nos. 34, 40. The Court finds this motion suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b) and hereby VACATES the hearing set for June 5, 2014 at 1:30 p.m. The Case Management Conference set for June 5, 2014...

...CA, for Defendants. ORDER GRANTING MOTION TO TRANSFER LUCY H. KOH , United States District Judge Before the Court is Defendants' motion...

53. Synopsys, Inc. v. InnoGrit, Corp.

United States District Court, N.D. California, San Jose Division. | June 26, 2019 | Not Reported in Fed. Supp. | 2019 WL 2617091

On April 23, 2019, the Court denied Plaintiff's ex parte application for a temporary restraining order. ECF No. 16 at 6. However, the Court also ordered Defendant to show cause why a preliminary injunction should not issue. Id. The Court permitted the parties to brief whether a preliminary injunction is appropriate here. Before the Court is the...

...Francisco, CA, for Defendant. ORDER GRANTING PRELIMINARY INJUNCTION LUCY H. KOH , United States District Judge On April 23, 2019, the Court...

54. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | May 08, 2017 | Not Reported in Fed. Supp. | 2017 WL 1833476

Before the Court are Adriana Shayota's motion for judgment of acquittal, ECF No. 499, Adriana Shayota's motion for a new trial, ECF No. 500, and Joseph Shayota's motion for a new trial, ECF No. 501. The government opposes all three motions. The Court held an evidentiary hearing on the issue of alleged juror misconduct on April 18, 2017. ECF No....

...OF ACQUITTAL Re: Dkt. Nos. 499, 500, 501 LUCY H. KOH , United States District Judge Before the Court are Adriana Shayota's...

55. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | May 09, 2017 | Not Reported in Fed. Supp. | 2017 WL 1861889

This order supersedes ECF No. 597. Before the Court are Adriana Shayota's motion for judgment of acquittal, ECF No. 499, Adriana Shayota's motion for a new trial, ECF No. 500, and Joseph Shayota's motion for a new trial, ECF No. 501. The government opposes all three motions. The Court held an evidentiary hearing on the issue of alleged juror...

...OF ACQUITTAL Re: Dkt. Nos. 499, 500, 501 LUCY H. KOH , United States District Judge This order supersedes ECF No. 597...

56. G & G Closed Circuit Events, LLC v. Nguyen

United States District Court, N.D. California, San Jose Division. | September 23, 2010 | Not Reported in F.Supp.2d | 2010 WL 3749284

Plaintiff G & G Closed Circuit Events, LLC, moves to strike Defendants' affirmative defenses. Pursuant to Local Civil Rule 7–1(b), the Court concludes that this motion is appropriate for determination without oral argument. Having considered the parties' submissions and the relevant law, the Court grants the motion in part and denies it in part....

...AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE LUCY H. KOH , District Judge. Plaintiff G & G Closed Circuit Events, LLC, moves...

57. LegalForce RAPC Worldwide P.C. v. GLOTRADE

United States District Court, N.D. California, San Jose Division. | October 23, 2019 | Slip Copy | 2019 WL 5423463

LegalForce RAPC Worldwide, P.C. ("Plaintiff") sued eighteen defendants, including Worldwide Mail Solutions, Inc. ("Defendant"), for alleged violations of the Lanham Act, California's False Advertising

Law, and California's Unfair Competition Law, as well as a claim for intentional interference with prospective economic...

...WITH LEAVE TO AMEND Re: Dkt. No. 18 LUCY H. KOH , United States District Judge LegalForce RAPC Worldwide, P.C. ("Plaintiff") sued...

58. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | October 04, 2016 | Not Reported in Fed. Supp. | 2016 WL 5786985

Defendants Joseph Shayota, Adriana Shayota, Walid Jamil, Kevin Attiq, Fadi Attiq, Mario Ramirez, and Camilo Ramirez (collectively, "Defendants"), were indicted on May 14, 2015. ECF No. 1. After the Court found that Counts Two and Three of the Indictment were "multiplicitous of each other," ECF No. 144, the Government filed a...

...Re: Dkt. Nos. 229, 230, 231, 235, 236 LUCY H. KOH , United States District Judge Defendants Joseph Shayota, Adriana Shayota, Walid...

59. Be In, Inc. v. Google Inc.

United States District Court, N.D. California, San Jose Division. | October 09, 2013 | Not Reported in Fed. Supp. | 2013 WL 5568706

Plaintiff Be In, Inc. ("Be In"), the developer of http://camup.com and its associated software ("CamUp"), filed this action against Defendants Google, Inc. ("Google"), YouTube, LLC ("YouTube"), and Google UK Ltd. ("Google UK") seeking damages and injunctive relief to remedy Defendants'...

...MOTION TO DISMISS PLAINTIFF'S THIRD CAUSE OF ACTION LUCY H. KOH , United States District Judge Plaintiff Be In, Inc. ("Be In...

60. ET Trading, Ltd v. ClearPlex Direct, LLC

United States District Court, N.D. California, San Jose Division. | March 02, 2015 | Not Reported in Fed. Supp. | 2015 WL 913911

On February 11, 2015, Plaintiff ET Trading, Ltd. ("Plaintiff" or "ET Trading") filed an ex parte application for a temporary restraining order ("TRO") to enjoin Defendants' sale, promotion, or distribution of any ClearPlex automotive film products in the People's Republic of China and the use of certain...

...PARTE APPLICATION FOR TRO Re: Dkt. No. 9 LUCY H. KOH , District Judge On February 11, 2015, Plaintiff ET Trading, Ltd...

61. Yahoo!, Inc. v. Does 1 Through 510, Inclusive

United States District Court, N.D. California, San Jose Division. | August 15, 2016 | Not Reported in Fed. Supp. | 2016 WL 4270264

Plaintiff Yahoo!, Inc. ("Yahoo") brings this action against 510 Doe Defendants ("Defendants"). Before the Court is Yahoo's motion for relief from a discovery matter referred to U.S. Magistrate Judge Howard

Lloyd. ECF No. 22 (“Mot.”). Having considered the briefing, the relevant law, and the record in this case,...

...DOES 11 THROUGH 510 Re: Dkt. No. 22 LUCY H. KOH , United States District Judge Plaintiff Yahoo!, Inc. (“Yahoo”) brings this...

62. J & J Sports Productions, Inc. v. Barwick

United States District Court, N.D. California, San Jose Division. | May 14, 2013 | Not Reported in F.Supp.2d | 2013 WL 2083123

Before the Court is Plaintiff J & J Sports Productions, Inc.'s Motion to Strike the Affirmative Defenses set forth in the Answer of Defendant Michael Dennis Barwick's a/k/a Dennis Barwick, individually and doing business as Luxe Lounge (“Barwick” or “Defendant”). ECF No. 12 (“Mot.”). Pursuant to Civil Local Rule 7–1(b), the Court has determined...

...se. ORDER GRANTING MOTION TO STRIKE AFFIRMATIVE DEFENSES LUCY H. KOH , District Judge. Before the Court is Plaintiff J & J Sports...

63. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | October 19, 2016 | Not Reported in Fed. Supp. | 2016 WL 6093237

At the October 12, 2016 final pretrial conference, Defendants Joseph and Adriana Shayota argued that the Government was required to produce documents in its possession related to a tax fraud investigation of Walid Jamil conducted by the Internal Revenue Service. The Court ordered supplemental briefing on this issue. On October 13, 2016, Defendants...

...TO TAX FRAUD INVESTIGATION Re: Dkt. No. 306 LUCY H. KOH , United States District Judge At the October 12, 2016 final...

64. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | October 04, 2016 | Not Reported in Fed. Supp. | 2016 WL 5791376

Before the Court are four motions to exclude evidence under Federal Rule of Evidence (“Rule”) 404(b). Camilo Ramirez, ECF No. 213 (“Camilo Ramirez Mot.”), Walid Jamil, ECF No. 216 (“Walid Jamil Mot.”), Mario Ramirez, ECF No. 218 (“Mario Ramirez Mot.”), and Joseph and Adriana Shayota, ECF No. 220...

...EVIDENCE Re: Dkt. Nos. 213, 213, 218, 220 LUCY H. KOH , United States District Judge Before the Court are four motions...

65. Cole-Parmer Instrument Company LLC v. Professional Laboratories, Inc.

United States District Court, N.D. California. | July 20, 2021 | Slip Copy | 2021 WL 3053201

Cole-Parmer Instrument Company LLC ("Plaintiff") sues Professional Laboratories, Inc. ("Defendant") for (1) trademark infringement under 15 U.S.C. § 1114(1); (2) federal unfair competition under 15 U.S.C. § 1125(a); (3) violation of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code...

...WITH LEAVE TO AMEND Re: Dkt. No. 9 LUCY H. KOH , United States District Judge Cole-Parmer Instrument Company LLC ("Plaintiff...

66. Kane v. Chobani, Inc.

United States District Court, N.D. California, San Jose Division. | July 15, 2013 | Not Reported in Fed. Supp. | 2013 WL 3776172

Plaintiffs Katie Kane, Darla Booth, and Arianna Rosales ("Plaintiffs") filed a motion for preliminary injunction to enjoin Defendant Chobani, Inc. ("Defendant") from selling, advertising, and distributing Chobani Greek Yogurt products and ordering them to remove and recall all such products from their distributors and...

...for Defendant. ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION LUCY H. KOH , United States District Judge Plaintiffs Katie Kane, Darla Booth, and...

67. Ervin v. Davis

United States District Court, N.D. California, San Jose Division. | September 08, 2016 | Not Reported in Fed. Supp. | 2016 WL 4705691

In 1991, Petitioner Curtis Lee Ervin ("Petitioner") was convicted of the murder of Carlene McDonald and sentenced to death. On September 7, 2007, Petitioner filed an amended petition for a writ of habeas corpus before this Court, which included 37 claims in total. ECF No. 97 ("Pet."). Respondent filed a motion for summary...

...JUDGMENT ON CLAIM 25 Re: Dkt. No. 213 LUCY H. KOH , United States District Judge In 1991, Petitioner Curtis Lee Ervin...

68. Facebook, Inc. v. Power Ventures, Inc.

United States District Court, N.D. California, San Jose Division. | August 08, 2017 | Not Reported in Fed. Supp. | 2017 WL 3394754

On May 2, 2017, the Court entered judgment in the instant case. On May 16, 2017, Plaintiff Facebook, Inc. ("Facebook") filed a motion for attorney's fees and a motion for contempt sanctions against Defendants Steve Vachani ("Vachani") and Power Ventures, Inc. ("Power"). ECF Nos. 446–47. Defendants did not...

...FOR CONTEMPT SANCTIONS Re: Dkt. Nos. 446, 447 LUCY H. KOH , United States District Judge On May 2, 2017, the Court...

69. Brocade Communications Systems, Inc. v. A10 Networks, Inc.
United States District Court, N.D. California, San Jose Division. | January 06, 2012 | Not Reported in F.Supp.2d | 2012 WL 33251

Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks, LLC (collectively "Brocade") bring this action against A10 Networks, Inc. ("A10"), and the following individuals: Lee Chen, Rajkumar Jalan, Ron Szeto, David Cheung, Liang Han, and Steve Hwang. Brocade asserts claims of patent and copyright infringement as well as trade secret...

...7,716,370 7,558,195 7,454,500 7,581,009 7,657,629 7,584,301 7,840,678 ; and 5,875,185 LUCY KOH , District Judge. Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks...

70. Facebook, Inc. v. Vachani
United States District Court, N.D. California, San Jose Division. | August 31, 2017 | 577 B.R. 838 | 2017 WL 3782781

BANKRUPTCY — Discharge. Claim that Chapter 7 debtor's judgment debt was not dischargeable was a core bankruptcy proceeding.

Synopsis
Background: After social networking website brought action against website that offered to integrate users' various social media accounts into a single experience, defendant website's Chief Executive Officer (CEO) filed for bankruptcy. Following judgment in its favor in the civil action, social networking website filed adversary proceeding alleged that the debt owed by CEO as a result of that judgment was nondischargeable. Social networking website filed motion for withdrawal of reference of the adversary proceeding.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 claim that Chapter 7 debtor's judgment debt was not dischargeable was a "core" bankruptcy proceeding, and
2 remaining relevant factors weighed against withdrawing reference.
Motion denied.

...FOR WITHDRAWAL OF REFERENCE Re: Dkt. No. 1 LUCY H. KOH , United States District Judge The instant case arises from the...

71. AirWair International Ltd. v. Schultz
United States District Court, N.D. California, San Jose Division. | November 12, 2014 | 73 F.Supp.3d 1225 | 2014 WL 5871580

TRADEMARKS — Jurisdiction. Court had jurisdiction over foreign defendant in trademark infringement suit.

Synopsis
Background: Owner of "Dr. Martens" trademark used in conjunction with footwear, filed suit against competitor, based in England, and its United States importer/licensee, alleging federal trademark infringement, federal false designation of origin, trademark dilution, California statutory unfair competition, common law unfair competition, and California statutory trademark dilution. British defendant moved to dismiss for lack of personal jurisdiction.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 defendant purposefully directed its activities at residents of California;
2 plaintiff's trademark infringement claim arose from defendant's activities in California; and

3 court's exercise of specific personal jurisdiction over British defendant was reasonable.
Motion denied.

...CA, for Plaintiff. ORDER DENYING MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff AirWair International Ltd. ("AirWair"), brings...

72. Facebook, Inc. v. Power Ventures, Inc.
United States District Court, N.D. California, San Jose Division. | May 02, 2017 | 252 F.Supp.3d 765 | 2017 WL 1650608

E-COMMERCE — Social Media. Social networking website operator suffered irreparable harm because of third-party developer's unauthorized access to its data.

Synopsis
Background: Operator of social networking website brought action alleging that third party developer and its chief executive officer (CEO) violated Controlling the Assault of NonSolicited Pornography and Marketing Act (CANSPAM), Computer Fraud and Abuse Act (CFAA), and California law by employing its proprietary data without its permission and by unlawfully accessing its website to send unsolicited and misleading commercial e-mails to its users. The United States District Court for the Northern District of California, James Ware, Chief Judge, 844 F.Supp.2d 1025, entered summary judgment in plaintiff's favor, and imposed discovery sanctions against developer. Defendants appealed. The Court of Appeals, 844 F.3d 1058, affirmed in part, reversed in part, and remanded.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 operator revoked its authorization for developer to access its data on date it sent cease and desist letter;
2 district court's determination that operator's attorney fees and investigation and enforcement costs attributable to developer's unauthorized access to its data were compensable under CFAA was law of the case;
3 district court's determination as to amount of operator's damages was law of the case;
4 district court's determination that operator incurred approximately $5,000 in damages due to time its employee spent investigating and responding to developer's CFAA violations was law of the case;
5 expert's testimony was admissible to support operator's claim that its employee's work was worth $4,950;
6 operator suffered irreparable harm in past and was likely to suffer irreparable harm in future because of developer's violations;
7 balance of hardships weighed in favor of granting permanent injunction; and
8 permanent injunction was warranted.
Ordered accordingly.

...ORDER REGARDING REMEDIES AND DENYING MOTION FOR STAY LUCY H. KOH , United States District Judge On December 9, 2016, the Ninth...

73. Alejandro Fernandez Tinto Pesquera, S.l v. Fernandez Perez
United States District Court, N.D. California. | January 26, 2021 | Slip Copy | 2021 WL 254193

Plaintiffs Alejandro Fernandez Tinto Pesquera, S.L. ("AFTP") and Folio Wine Company, LLC ("Folio") (collectively, "Plaintiffs") sue Defendants Alejandro Fernandez Perez ("Fernandez") and individuals whose identities are unknown to Plaintiffs. Before the Court is specially appearing Defendant...

...TO DISMISS WITH PREJUDICE Re: Dkt. No. 35 LUCY H. KOH , United States District Judge Plaintiffs Alejandro Fernandez Tinto Pesquera, S.L...

74. Facebook, Inc. v. Power Ventures, Inc.

United States District Court, N.D. California, San Jose Division. | September 25, 2013 | Not Reported in Fed. Supp. | 2013 WL 5372341

Defendant Power Ventures, Inc. ("Power Ventures") and Defendant Steve Vachani ("Vachani") (collectively, "Defendants") request leave to file a motion for reconsideration of the February 16, 2012 summary judgment order issued by Judge James Ware. Plaintiff, Facebook, Inc. moves for statutory and...

...LAW, AND GRANTING DAMAGES AND PERMANENT INJUNCTIVE RELIEF LUCY H. KOH , United States District Judge Defendant Power Ventures, Inc. ("Power Ventures...

75. Benedict v. Hewlett-Packard Company

United States District Court, N.D. California, San Jose Division. | January 21, 2014 | Not Reported in Fed. Supp. | 2014 WL 234218

This Order addresses a motion to dismiss which arises in the context of a class action lawsuit brought by Plaintiffs Eric Benedict, Richard Bowders, and Kilricanos Vieira, on behalf of themselves and classes of those similarly situated, against Defendant Hewlett–Packard Company (hereinafter "HP") for violations of the Fair Labor...

...TO DISMISS HEWLETT-PACKARD'S COUNTERCLAIMS AGAINST ERIC BENEDICT LUCY H. KOH , United States District Judge This Order addresses a motion to...

76. Merritt v. JP Morgan

United States District Court, N.D. California, San Jose Division. | April 24, 2018 | Not Reported in Fed. Supp. | 2018 WL 1933478

Plaintiffs Salma and David Merritt ("Plaintiffs") sued JPMorgan Chase, N.A., Jamie Dimon, David Gillis, Structured Asset Mortgage Investments II, Inc., John Costango, Aisling Desola, Specialized Loan Servicing, LLC, Tobey Wells, Ami McKernan, Michael Ward, Zieve Brodnax & Steele LLP, John Steele, Michael Busby, U.S. Bank N.A., Andrew...

...ERIC GREEN Re: Dkt. Nos. 58, 60, 62 LUCY H. KOH , United States District Judge Plaintiffs Salma and David Merritt ("Plaintiffs...

77. Apple, Inc. v. Samsung Electronics Co., Ltd.

United States District Court, N.D. California, San Jose Division. | December 02, 2011 | Not Reported in F.Supp.2d | 2011 WL 7036077

Plaintiff Apple, Inc. ("Apple") brings this motion for a preliminary injunction seeking to enjoin Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications

America, LLC (collectively “Samsung”) from “making, using, offering to sell, or selling within the United States, or importing into the United...

...for Defendants. ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION LUCH H. KOH , District Judge. Plaintiff Apple, Inc. (“Apple”) brings this motion for...

1. Diamond S.J. Enterprise, Inc. v. City of San Jose

United States District Court, N.D. California, San Jose Division. | December 30, 2019 | 430 F.Supp.3d 637 | 2019 WL 7312517

CIVIL RIGHTS — Free Speech. City's licensing scheme for public entertainment businesses did not target speech or expressive conduct, and thus did not violate First Amendment.

Synopsis
Background: Nightclub owner and operator brought 1983 action against city alleging free speech and due process violations under Federal and State Constitutions, challenging city ordinances and entertainment license suspension process after city suspended license following shooting in parking lot behind club. City moved for summary judgment and nightclub cross-moved for partial summary judgment.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 law of the case doctrine applied to preclude nightclub from asserting First Amendment overbreadth and vagueness challenges to city ordinance requiring permitted public entertainment businesses to make certain arrangements for security;
2 nuisance provisions in city's licensing scheme for public entertainment businesses did not implicate nightclub's First Amendment rights;
3 city's licensing scheme for public entertainment businesses did not target speech or expressive conduct;
4 city ordinance which provided the definition of an “event promoter,” did not impose any restrictions on protected expression;
5 ordinance providing that each event promoter would be jointly and severally liable for violations of licensing scheme did not implicate the First Amendment; and
6 nightclub could not prevail on its claim that city's permitting scheme for event promoters, as a whole, violated the First Amendment.
Motion for summary judgment granted; cross-motion for partial summary judgment denied.

...DENYING PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT LUCY H. KOH , United States District Judge Before the Court is Defendant City...

2. Diamond S.J. Enterprise, Inc. v. City of San Jose

United States District Court, N.D. California, San Jose Division. | July 01, 2019 | 395 F.Supp.3d 1202 | 2019 WL 2744700

CIVIL RIGHTS — Free Speech. Substantive due process challenge to city entertainment ordinances was not cognizable insofar as more specific First Amendment applied to allegations.

Synopsis
Background: Nightclub owner and operator brought 1983 action against city alleging free speech and due process violations under Federal and State Constitutions, challenging city ordinances and entertainment license suspension process after city suspended license following shooting in parking lot behind club. City moved to dismiss for failure to state claim and moved to strike portions of complaint.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 challenged ordinances were not prior restraints on speech under First Amendment;
2 the District Court would strike immaterial portion of complaint;
3 the District Court would not strike portion of complaint bearing on issue in litigation;
4 substantive due process claims were not cognizable insofar as more specific First Amendment applied to plaintiff's allegations;
5 city did not deprive owner and operator of procedural due process;
6 claim preclusion barred free speech and due process claims under State Constitution.

Motion to dismiss granted; motion to strike granted in part and denied in part.

...PART MOTION TO STRIKE Re: Dkt. No. 55 LUCY H. KOH , United States District Judge Plaintiff Diamond S.J. Enterprise, Inc. brings...

3. Art of Living Foundation v. Does 1-10

United States District Court, N.D. California, San Jose Division. | November 09, 2011 | Not Reported in F.Supp.2d | 2011 WL 5444622

Doe Defendant, specially appearing under the pseudonym "Skywalker," moves for relief from Magistrate Judge Lloyd's order denying his motion to quash a subpoena intended to discover his identity from third-party Internet Service Providers. Having considered the parties' briefing and oral arguments, the Court finds that Skywalker's First Amendment...

...NONDISPOSITIVE PRE–TRIAL ORDER RE: MOTION TO QUASH LUCY H. KOH , District Judge. Doe Defendant, specially appearing under the pseudonym "Skywalker...

4. Prager University v. Google LLC

United States District Court, N.D. California, San Jose Division. | March 26, 2018 | Not Reported in Fed. Supp. | 2018 WL 1471939

Plaintiff Prager University ("Plaintiff") sues Defendants YouTube, LLC ("YouTube") and Google LLC ("Google") (collectively, "Defendants") for allegedly censoring some of the videos that Plaintiff uploaded on YouTube based on Plaintiff's conservative political identity and viewpoint. Before the Court...

...A PRELIMINARY INJUNCTION Re: Dkt. Nos. 24, 31 LUCY H. KOH , United States District Judge Plaintiff Prager University ("Plaintiff") sues Defendants...

5. Life Savers Concepts Association of California v. Wynar

United States District Court, N.D. California, San Jose Division. | May 16, 2019 | 387 F.Supp.3d 989 | 2019 WL 2144630

CIVIL RIGHTS — Searches and Seizures. Allowing corporation to bring Bivens suit on behalf of employees was new Bivens context for which there were alternative remedial structures.

Synopsis
Background: Corporation and individual employees brought action against federal agents and other individuals, asserting *Bivens* claims for violations of the First, Fourth, Fifth, and Fourteenth Amendments related to agent's actions during investigation and execution of search warrant at business's office, during which employees were detained. Defendants moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 *Bivens* did not provide remedy for corporate plaintiff's claims;
2 individual plaintiffs lacked standing to assert First Amendment claim centered around agent's alleged appearance at a meeting;
3 individual plaintiffs failed to state First Amendment claim based on agent's alleged abusive conduct during execution of search warrant;

4 individual plaintiffs failed to state a claim for violation of their Fifth Amendment rights;
5 individual plaintiff plausibly alleged that agent forced an interrogation in violation of her constitutional rights; and
6 individual plaintiffs failed to allege with particularity that agent violated their Fourth Amendment rights with excessive force and unreasonable detentions.
Motion granted in part and denied in part.

...PART MOTION TO DISMISS Re: Dkt. No. 47 LUCY H. KOH , United States District Judge Plaintiffs Life Savers Concepts Association of...

6. Ryan v. Santa Clara Valley Transportation Authority

United States District Court, N.D. California, San Jose Division. | July 25, 2017 | Not Reported in Fed. Supp. | 2017 WL 3142130

Plaintiff Joseph Ryan ("Plaintiff") sues Defendants Santa Clara Valley Transportation Authority ("SCVTA") and Joseph Fabela ("Fabela") (collectively, "Defendants"). ECF No. 37. Before the Court is Defendants' motion to dismiss and/or motion to strike the Third Amended Complaint ("TAC")....

...DEFENDANTS' MOTION TO STRIKE Re: Dkt. No. 59 LUCY H. KOH , United States District Judge Plaintiff Joseph Ryan ("Plaintiff") sues Defendants...

7. Federal Agency of News LLC v. Facebook, Inc.

United States District Court, N.D. California, San Jose Division. | July 20, 2019 | 395 F.Supp.3d 1295 | 2019 WL 3254208

CIVIL RIGHTS — Immunity. Social media company was an interactive computer service for purposes of immunity under the Communications Decency Act.

Synopsis
Background: Social media user brought action against social media company arising from social media company's removal of user's social media account, page, and content asserting *Bivens* claim for violation of First Amendment, damages under Title II of the Civil Rights Act and 1983, damages under the California Unruh Civil Rights Act, breach of contract, and breach of implied covenant of good faith and fair dealing. Company moved to dismiss for failure to state a claim.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 user failed to state a 1983 claim;
2 company was an interactive computer service, as required for immunity under Communications Decency Act;
3 user's deleted account, page, and content were information provided by another information content provider, not company, as required for immunity under Communications Decency Act;
4 user sought to hold company liable as publisher, as required for immunity under Communications Decency Act;
5 company was not a public form, as required for user's *Bivens* claim; and
6 company's actions did not amount to state action, as required for user's *Bivens* claim.
Motion granted.

...TO DISMISS WITHOUT PREJUDICE Re: Dkt. No. 25 LUCY H. KOH , United States District Judge Plaintiffs Federal Agency of News LLC...

List of 45 results for adv: "first amendment"

8. Ryan v. Fabela
United States District Court, N.D. California, San Jose Division. | February 02, 2018 | Slip Copy | 2018 WL 10196531

Plaintiff Joseph Ryan ("Plaintiff") brought this action against Defendant Santa Clara Valley Transportation Authority ("SCVTA"), Defendant Robert Fabela, in his individual and official capacities, and Defendant Nuria Fernandez, in her individual and official capacities. All claims against SCVTA and Fernandez have been...

...SUMMARY JUDGMENT Re: Dkt. Nos. 72, 76, 77 LUCY H. KOH , United States District Judge Plaintiff Joseph Ryan ("Plaintiff") brought this...

9. Diamond S.J. Enterprise, Inc. v. City of San Jose
United States District Court, N.D. California, San Jose Division. | October 29, 2018 | Not Reported in Fed. Supp. | 2018 WL 5619746

Plaintiff Diamond S.J. Enterprise, Inc. brings suit against Defendant the City of San Jose ("San Jose" or "City"). Plaintiff owns and operates a nightclub called SJ Live in San Jose, California. The City issued notice to Plaintiff revoking Plaintiff's entertainment permit to operate as a nightclub. After attempts to appeal...

...DEFENDANT'S MOTION TO STRIKE Re: Dkt. No. 37 LUCY H. KOH , United States District Judge Plaintiff Diamond S.J. Enterprise, Inc. brings...

10. Adams v. Kraft
United States District Court, N.D. California, San Jose Division. | March 08, 2011 | Not Reported in F.Supp.2d | 2011 WL 846065

Plaintiff Berry Lynn Adams filed his First Amended Complaint (Dkt. No. 80, "FAC") on December 6, 2010. Defendants Best, Bockman, Callison, Hauck, Kraft, Lingenfelter, Sipes, and Stone (collectively "Defendants") move to dismiss Adams' FAC pursuant to Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 81 ("Mot."); see also Dkt. No. 91 ("Reply")....

...AND DENYING IN PART DEFENDANTS. MOTION TO DISMISS LUCY H. KOH , District Judge. Plaintiff Berry Lynn Adams filed his First Amended...

11. Adams v. Kraft
United States District Court, N.D. California, San Jose Division. | October 25, 2011 | 828 F.Supp.2d 1090 | 2011 WL 5079528

CIVIL RIGHTS - Attorney Fees. Genuine issue of material fact existed as to whether state park rangers had probable cause to arrest.

Synopsis

Background: Arrestee brought 1983 action against state park rangers, alleging violations of the First and Fourth Amendments, as well as the California Constitution. Rangers filed motion for summary judgment.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 genuine issue of material fact existed as to whether state park rangers had probable cause to arrest;
2 genuine issue of material fact existed as to the nature and quality of intrusion against arrestee;
3 genuine issue of material fact existed as to whether arrestee was a threat to state park rangers;
4 genuine issue of material fact existed as to whether arrestee was actively resisting arrest;
5 genuine issue of material fact existed as to whether arrestee engaged in constitutional protected speech;
6 genuine issue of material fact existed as to whether state park ranger had retaliatory intent in performing arrest; and
7 genuine issue of material fact existed as to whether state park rangers acted with evil motive or intent, or with malice during arrest.
Motion granted in part and denied in part.

...DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , District Judge. Plaintiff Berry Lynn Adams ("Adams") brings this action...

12. Federal Agency of News LLC v. Facebook, Inc.

United States District Court, N.D. California, San Jose Division. | January 13, 2020 | 432 F.Supp.3d 1107 | 2020 WL 137154

E-COMMERCE — Social Media. Website was not willful participant in joint action with United States government, as would support imposing liability under § 1983.

Synopsis
Background: Russian corporation brought action against social network website after the website removed the corporation's account and page on the social network for alleged interference in United States presidential election. The social network moved to dismiss for failure to state a claim.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 the network was an interactive computer service, as required for the social network to be immune from liability for third-party content under Communications Decency Act;
2 Russian corporation's social media account, posts, and other content on the network's website was solely provided by the corporation, as required for the social network to be immune from liability for deleting the account;
3 the network did not engage in any functions exclusively reserved for the government, and thus was not a public forum for purposes of 1983 claims based on alleged First Amendment violations;
4 the network was not a willful participant in joint action with United States government, as would support imposing liability against the network under 1983; and
5 the network did not conspire with United States government to violate constitutional rights, as would support imposing liability against the network under 1983.
Motion granted.

...TO DISMISS WITH PREJUDICE Re: Dkt. No. 40 LUCY H. KOH , United States District Judge Plaintiffs Federal Agency of News LLC...

13. Quiroz v. Horel

United States District Court, N.D. California. | March 31, 2015 | 85 F.Supp.3d 1115 | 2015 WL 1485024

CIVIL RIGHTS — Prisons. Prison officials did not have retaliatory motive in stopping incoming letter to prisoner from his niece that was allegedly gang-related.

Synopsis
Background: State prisoner, proceeding pro se, brought action against prison officials, alleging, inter alia, that officials retaliated against prisoner for filing prior federal civil rights complaint and for participating in another inmate's civil rights suit. Officials moved for summary judgment.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 officials did not have retaliatory motive in stopping incoming letter to prisoner from his girlfriend's cousin;
2 officials did not have retaliatory motive in stopping incoming letter to prisoner from his niece;
3 officials did not have retaliatory motive in stopping prisoner's outgoing letter to his friend;
4 officials did not have retaliatory motive in stopping prisoner's mail containing legal discovery documents;
5 officials' act of delaying prisoner's mail did not harm prisoner;
6 genuine issue of material fact existed as to whether official had retaliatory motive for issuing Rules Violation Report (RVR) against prisoner;
7 genuine issue of material fact existed as to whether officials had retaliatory motive when they searched prisoner's cell; and
8 genuine issue of material fact existed as to whether prison officials had agreement to retaliate against prisoner.
Motion granted in part and denied in part.

...CASE TO SETTLEMENT PROCEEDINGS (Docket Nos. 267, 291) LUCY H. KOH , District Judge Plaintiff, a state prisoner proceeding pro se, filed...

14. Adams v. Kraft

United States District Court, N.D. California, San Jose Division. | July 29, 2011 | Not Reported in F.Supp.2d | 2011 WL 3240598

Plaintiff Berry Lynn Adams filed his Second Amended Complaint (Dkt. No. 110–11, "SAC") on April 7, 2011. Defendants Daniel L. Kraft ("Kraft"), Phillip Hauck ("Hauck"), Kirk Lingenfelter ("Lingenfelter"), K.P. Best ("Best"), J.I. Stone ("Stone"), Chip Bockman ("Bockman"), R. Callison ("Callison"), and Scott Sipes ("Sipes") (collectively...

...AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS LUCY H. KOH , District Judge. Plaintiff Berry Lynn Adams filed his Second Amended...

15. Treglia v. Cate

United States District Court, N.D. California. | August 28, 2012 | Not Reported in F.Supp.2d | 2012 WL 3731774

Plaintiff, a state prisoner proceeding pro se, filed a complaint under 42 U.S.C. § 1983, arguing that Defendants violated his First and Fourth Amendments, as well as state law. On February 17, 2012, Defendants filed a motion for summary judgment. Plaintiff has filed an opposition, along with supporting documents, and Defendants have filed a reply....

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

16. Abdel-Shafy v. City of San Jose

United States District Court, N.D. California, San Jose Division. | February 12, 2019 | Not Reported in Fed. Supp. | 2019 WL 570759

Plaintiff Alison Yew Abdel-Shafy ("Plaintiff") brings suit against Defendants City of San Jose, San Jose Police Department, San Jose Police Officer Juan Garcia, and San Jose Police Officer Daniel Akery (collectively, "Defendants"). Before the Court is Defendants' motion to dismiss Plaintiff's Complaint. ECF No. 45...

...STATE CLAIMS WITHOUT PREJUDICE Re: Dkt. No. 45 LUCY H. KOH , United States District Judge Plaintiff Alison Yew Abdel-Shafy ("Plaintiff...

17. Loan Payment Administration LLC v. Hubanks

United States District Court, N.D. California, San Jose Division. | December 07, 2018 | Not Reported in Fed. Supp. | 2018 WL 6438364

Plaintiffs Nationwide Biweekly Administration, Inc.; Loan Payment Administration LLC; and Daniel Lipsky (collectively, "Nationwide") bring this suit against Defendants John Hubanks, Andres Perez, the Monterey County District Attorney's Office, and the Marin County District Attorney's Office (collectively, "Defendants")....

...TO DISMISS WITH PREJUDICE Re: Dkt. No. 110 LUCY H. KOH , United States District Judge Plaintiffs Nationwide Biweekly Administration, Inc.; Loan...

18. Tandon v. Newsom

United States District Court, N.D. California, San Jose Division. | February 05, 2021 | 517 F.Supp.3d 922 | 2021 WL 411375

CIVIL RIGHTS — Free Speech. COVID-19-related restrictions imposed by California and California county on private gatherings did not infringe on freedom of speech and assembly.

Synopsis
Background: Objectors, who included business owners and a political candidate, brought action in which they challenged validity of COVID-19-related restrictions imposed by California and California county. Objectors then moved for a preliminary injunction.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 objectors were not likely to succeed on claim that restrictions violated substantive due process;
2 rational-basis review applied to equal-protection challenge asserted by objectors who were business owners;
3 rational basis existed for the restrictions;
4 restrictions did not, based on both intermediate and strict scrutiny, infringe on First Amendment rights of free speech and assembly;
5 political candidate's claim that the restrictions violated First Amendment rights of free speech and assembly was not rendered moot by the occurrence of the general election;
6 rational-basis review applied to challenge to restrictions that was based on freedom of religion under the First Amendment; and
7 a preliminary injunction enjoining the restrictions would not be in the public interest.
Motion denied.

...MOTION FOR PRELIMINARY INJUNCTION Re: Dkt. No. 18 LUCY H. KOH , United States District Judge Plaintiffs Ritesh Tandon, Terry and Carolyn...

19. Parrish v. Solis

United States District Court, N.D. California, San Jose Division. | May 13, 2014 | Not Reported in Fed. Supp. | 2014 WL 1921154

Plaintiff Kaheal Parrish, a prisoner incarcerated at Salinas Valley State Prison ("SVSP"), filed this lawsuit on March 18, 2011 alleging violations of his civil rights by several prison officials. ECF No. 1. Plaintiff's original complaint named as defendants A. Solis, B. Hedrick, W. Muniz, K. Salazar, R. Machuca, B....

...MOTION FOR LEAVE TO FILE A SUR–REPLY LUCY H. KOH , United States District Judge Plaintiff Kaheal Parrish, a prisoner incarcerated...

20. Ryan v. Santa Clara Valley Transportation Authority

United States District Court, N.D. California, San Jose Division. | March 30, 2017 | Not Reported in Fed. Supp. | 2017 WL 1175596

Plaintiff Joseph Ryan ("Plaintiff") sues Defendants Santa Clara Valley Transportation Authority ("SCVTA") and Joseph Fabela ("Fabela") (collectively, "Defendants"). ECF No. 37. Before the Court is Defendants' motion to dismiss. ECF No. 41 ("Mot."). Having considered the submissions of the...

...PART MOTION TO DISMISS Re: Dkt. No. 41 LUCY H. KOH , United States District Judge Plaintiff Joseph Ryan ("Plaintiff") sues Defendants...

21. Rice v. Ramsey

United States District Court, N.D. California. | September 19, 2012 | Not Reported in F.Supp.2d | 2012 WL 4177438

Plaintiff Steven Rice, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at the Correctional Training Facility ("CTF"). Plaintiff alleged violations of his First Amendment free exercise rights, his Fourteenth Amendment equal protection rights, and the Religious Land Use and Institutionalized...

...MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , District Judge. Plaintiff Steven Rice, proceeding pro se, filed a...

22. Loan Payment Administration LLC v. Hubanks

United States District Court, N.D. California, San Jose Division. | March 17, 2015 | Not Reported in Fed. Supp. | 2015 WL 1245895

Before the Court is a motion for preliminary injunction filed by Plaintiffs Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, and Daniel S. Lipsky (collectively, "Nationwide").

ECF No. 5 ("Motion"). Nationwide requests that the Court issue a preliminary injunction prohibiting Defendants...

...FOR PRELIMINARY INJUNCTION Re: Dkt. Nos. 5, 17 LUCY H. KOH , United States District Judge Before the Court is a motion...

23. Rice v. Curry

United States District Court, N.D. California. | October 12, 2012 | Not Reported in F.Supp.2d | 2012 WL 4902829

Plaintiff Steven Rice, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at the Correctional Training Facility ("CTF"). Plaintiff alleged violations of his First Amendment free exercise rights, his Fourteenth Amendment equal protection rights, and the Religious Land Use and Institutionalized...

...MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , District Judge. Plaintiff 1 Steven Rice, proceeding pro se, filed...

24. Perkins v. Linkedin Corporation

United States District Court, N.D. California, San Jose Division. | November 13, 2014 | 53 F.Supp.3d 1222 | 2014 WL 6618753

E-COMMERCE — Social Media. Operator of social media website was "information content provider" that was not entitled to Communications Decency Act (CDA) immunity.

Synopsis
Background: Users of social media website brought putative class action against operator of website, alleging that operator misappropriated users' names and likenesses in e-mail reminding users' contacts of initial invitation users sent to contacts to connect on website. Operator moved to dismiss for failure to state claim.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 users failed to allege mental anguish, as required for minimum statutory damages;
2 operator was "information content provider" that was not entitled to Communications Decency Act (CDA) immunity;
3 users alleged that reminder e-mails constituted misleading commercial speech;
4 users alleged that reminder e-mails were not adjunct to underlying initial invitations; and
5 users alleged that operator's use of users' names and likenesses was not incidental to operator's commercial purposes.
Motion granted in part and denied in part.

...AND DENYING IN PART DEFENDANT' MOTION TO DISMISS LUCY H. KOH , United States District Judge Paul Perkins ("Perkins"), Pennie Sempell ("Sempell...

25. Quiroz v. Short

United States District Court, N.D. California. | March 31, 2015 | 85 F.Supp.3d 1092 | 2015 WL 1482744

CIVIL RIGHTS — Prisons. Prison official did not have retaliatory motive in investigating administrative grievance of prisoner who had previously filed civil rights lawsuit.

Synopsis
Background: State prisoner, proceeding pro se, brought action against prison officials, alleging, inter alia, that officials retaliated against prisoner for filing prior federal civil rights complaint and for participating in another inmate's civil rights suit. One official moved for summary judgment.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 official did not have retaliatory motive in investigating administrative grievance;
2 prisoner's assertion that one of official's duties was to monitor incoming and outgoing mail was insufficient to show that official destroyed two specific pieces of prisoner's mail;
3 genuine issue of material fact existed as to whether official acted with retaliatory motive when he sent to prisoner's fiance a letter intended for other woman;
4 genuine issue of material fact existed as to whether prison official acted with retaliatory motive when he issued rules violation report (RVR) against prisoner;
5 official was entitled to qualified immunity on prisoner's right to intimate association claim;
6 official's act of sending to prisoner's fiance a letter intended for other woman did not prevent prisoner from continuing to associate with fiance;
7 official's act of sending to prisoner's fiance a letter intended for other woman did not prevent prisoner from marrying fiance; and
8 genuine issue of material fact existed as to whether officials had agreement to retaliate against prisoner by issuing RVR against him.
Motion granted in part and denied in part.

...REFERRING CASE TO SETTLEMENT PROCEEDINGS (Docket No. 246) LUCY H. KOH , District Judge This order supersedes ECF Docket No. 308, which...

26. Furnace v. Giurbino
United States District Court, N.D. California. | November 22, 2013 | Not Reported in Fed. Supp. | 2013 WL 6157954

Plaintiff, a state prisoner proceeding pro se, filed a second amended civil rights complaint ("SAC") against prison officials pursuant to 42 U.S.C. §1983. In his SAC, plaintiff alleges that defendants violated his right to due process, the Equal Protection Clause, plaintiff's First Amendment right to publications, and...

...for Defendants. ORDER GRANTING DEFENDANTS' MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff, a state prisoner proceeding pro...

27. Art of Living Foundation v. Does
United States District Court, N.D. California, San Jose Division. | June 15, 2011 | Not Reported in F.Supp.2d | 2011 WL 2441898

It has long been settled that an author's decision to remain anonymous is an aspect of freedom of speech protected by the First Amendment. The right to speak anonymously, however, is not unlimited. This case centers on the contours of balancing the First Amendment rights of online authors' decisions to speak anonymously and critically of an...

...MOTION TO DISMISS AND DENYING MOTION TO STRIKE LUCY H. KOH , District Judge. It has long been settled that an author's...

28. Steshenko v. Gayrard

United States District Court, N.D. California, San Jose Division. | September 29, 2014 | 70 F.Supp.3d 979 | 2014 WL 4904424

EDUCATION — Admission. Applicant alleged nexus between protected activity and denial of admission to graduate school program, supporting First Amendment retaliation claim.

Synopsis
Background: Applicant brought action against state university's board of trustees and heads of particular graduate programs at university, alleging age discrimination and retaliation based on denial of his admission into graduate programs. Defendants moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 board could evoke Eleventh Amendment immunity;
2 board waived Eleventh Amendment immunity with respect to Age Discrimination Act claims;
3 applicant sufficiently pled his 1983 claim for First Amendment retaliation with respect to denial of admission into one program, but not with respect to second program;
4 applicant had no protected property interest in admission into programs, precluding his procedural due process claims under 1983;
5 applicant did not allege sufficient specific facts regarding alleged conspiracies under 1985; and
6 applicant did not adequately plead California-law intentional infliction of emotional distress claim.
Motion granted in part and denied in part.

...PART AND DENYING IN PART MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff Gregory Nicholas Steshenko ("Plaintiff") brings...

29. Estate of Fuller v. Maxfield & Oberton Holdings, LLC

United States District Court, N.D. California, San Jose Division. | November 05, 2012 | 906 F.Supp.2d 997 | 2012 WL 5392626

TRADEMARKS - Name or Likeness. Manufacturer of "BuckyBalls" could not benefit from transformative use defense.

Synopsis
Background: Estate of inventor, for whom buckminsterfullerene molecule, commonly referred to as a "buckyball," had been named, sued desk toy manufacturer for violation of Lanham Act, invasion of privacy under California common law, invasion of privacy under California statute, and violation of California Unfair Competition Law (UCL), alleging that manufacturer misappropriated inventor's name and likeness. Manufacturer moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 District Court would take judicial notice of scientific article republished on website of institute named for inventor;
2 District Court would not take judicial notice of webpage and other items;
3 question whether product was named after molecule rather than inventor could not be resolved on motion to dismiss;
4 manufacturer could not benefit from transformative use defense;
5 question of manufacturer's decisionmaking process, for purposes of limitations period applicable to claim under California statute providing remedy for commercial misappropriation regarding deceased persons, could not be resolved on motion to dismiss;
6 use of inventor's name and identity was not subject to statutory exception to California right of publicity claims for matters of public affairs; and

7 complaint sufficiently alleged that manufacturer did something that suggested sponsorship or endorsement by trademark holder, as required to state cause of action under Lanham Act; and 8 estate stated cause of action under UCL.
Motion denied.

...CA, for Defendant. ORDER DENYING MOTION TO DISMISS LUCY H. KOH , District Judge. Plaintiff the Estate of Buckminster Fuller ("Plaintiff") filed...

30. Milliken v. Sturdevant
United States District Court, N.D. California, San Jose Division. | May 15, 2020 | Slip Copy | 2020 WL 2512381

Plaintiff is a California prisoner incarcerated at California State Prison, Sacramento ("CSP-Sac"). Plaintiff was previously incarcerated at Pelican Bay State Prison ("PBSP") and California State Prison, Corcoran ("CSP-Cor"). See Dkt. No. 1. Pursuant to 42 U.S.C. § 1983, plaintiff filed a pro se civil rights...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 45 LUCY H. KOH , UNITED STATES DISTRICT JUDGE Plaintiff is a California prisoner incarcerated...

31. United States v. Yang
United States District Court, N.D. California, San Jose Division. | October 25, 2019 | Slip Copy | 2019 WL 5536210

On October 15, 2019, Defendant Jennifer Yang filed two motions to dismiss portions of the superseding indictment (ECF Nos. 163, 165), which Defendant Daniel Wu joined (ECF No. 175, 176). In connection with those motions to dismiss, Defendants filed a request for judicial notice, which contained various exhibits. ECF No. 164. Because those exhibits...

...ADMINISTRATIVE MOTION TO SEAL Re: Dkt. No. 196 LUCY H. KOH , United States District Judge On October 15, 2019, Defendant Jennifer...

32. Haney v. Sullivan
United States District Court, N.D. California. | March 04, 2019 | Not Reported in Fed. Supp. | 2019 WL 1024409

Plaintiff is a California prisoner incarcerated at Salinas Valley State Prison ("SVSP"). He has filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983. In the operative pleading, plaintiff asserts two claims. Plaintiff's first claim, for violation of the Eighth Amendment, is pled against five defendants: M....

...Re: Dkt. No. 40, 48, 49, 50, 55 LUCY H. KOH , UNITED STATES DISTRICT JUDGE Plaintiff is a California prisoner incarcerated...

33. Saif'ullah v. Albritton
United States District Court, N.D. California, San Jose Division. | June 30, 2017 | Not Reported in Fed. Supp. | 2017 WL 2834119

Plaintiffs Khalifah El-Amin Din Saif'ullah, Enver Karafili, Montshu Abdullah, Amir Shabazz, Abdullah Saddiq, Mujahid Ta'lib Din, Andre Lamont Batten, Hatim Fardan, Abdul Aziz, Anthony Bernard Smith, Jr., and Damian Mitchell are California state prisoners proceeding pro se. Each plaintiff filed a civil rights complaint under 42 U.S.C....

...FORMA PAUPERIS STATUS; GRANTING MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , United States District Judge Plaintiffs Khalifah El-Amin Din Saif'ullah...

34. Rodriguez v. City of Salinas

United States District Court, N.D. California, San Jose Division. | January 07, 2011 | Not Reported in F.Supp.2d | 2011 WL 62500

In his First Amended Complaint, Plaintiff Carlos Rodriguez alleges violations of his First, Fourth, and Fourteenth Amendment rights in connection with a search of his home that resulted in his arrest and a third-party's conviction on criminal charges. Defendants moved to dismiss the First Amended Complaint pursuant to the doctrine articulated by...

...CA, for Defendants. ORDER DENYING MOTION TO DISMISS LUCY H. KOH , District Judge. In his First Amended Complaint, Plaintiff Carlos Rodriguez...

35. Patkins v. Koenig

United States District Court, N.D. California, San Jose Division. | April 23, 2021 | Slip Copy | 2021 WL 1599319

Plaintiff David Patkins ("Plaintiff"), who is incarcerated at the Correctional Training Facility ("CTF") in Soledad, California, sues A. Lisk ("Lisk"), who was a correctional officer at CTF, and Craig Koenig ("Koenig"), who is the warden of CTF (collectively, "Defendants"). Before the...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 68 LUCY H. KOH , United States District Judge Plaintiff David Patkins ("Plaintiff"), who is...

36. Ferris v. City of San Jose

United States District Court, N.D. California, San Jose Division. | April 18, 2012 | Not Reported in F.Supp.2d | 2012 WL 1355715

Plaintiff Sam Ferris ("Ferris") brings this action in propria persona under 42 U.S.C. §§ 1983 and 1985 and California Civil Code § 52.1 against the City of San Jose, the San Jose Chief of Police, and various unnamed police officers in their individual and official capacities (collectively the "City Defendants"), alleging violation of his Fourth...

...COMPLAINT; DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT LUCY H. KOH , District Judge. Plaintiff Sam Ferris ("Ferris") brings this action in...

List of 45 results for adv: "first amendment"

37. Smith v. Cruzen
United States District Court, N.D. California, San Jose Division. | October 26, 2017 | Not Reported in Fed. Supp. | 2017 WL 4865565

Plaintiff Anthony Bernard Smith, a California state prisoner proceeding pro se, filed an amended civil rights complaint under 42 U.S.C. §1983. On February 21, 2017, defendants filed a motion for summary judgment. Plaintiff has filed an opposition, and defendants have filed a reply. For the reasons stated below, defendants' motion is...

...FOR SUMMARY JUDGMENT Re: Dkt. Nos. 64, 80 LUCY H. KOH , United States District Judge Plaintiff Anthony Bernard Smith, a California...

38. Larson v. Creamer–Todd
United States District Court, N.D. California. | February 25, 2014 | Not Reported in Fed. Supp. | 2014 WL 721953

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. §1983 alleging that prison officials at Central Training Facility in Soledad retaliated against him, in violation of the First Amendment. Defendants have moved for summary judgment. Although given an opportunity, plaintiff...

...CASE TO SETTLEMENT PROCEEDINGS (Docket No. 36, 50) LUCY H. KOH , United States District Judge Plaintiff, a state prisoner proceeding pro...

39. Saif'ullah v. Cruzen
United States District Court, N.D. California. | October 26, 2017 | Not Reported in Fed. Supp. | 2017 WL 4865601

Plaintiff Khalifah E.D. Saif'ullah, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983. On May 9, 2017, defendants filed a motion for summary judgment. Plaintiff has filed an opposition, and defendants have filed a reply. For the reasons stated below, defendants' motion is granted. The...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 44 LUCY H. KOH , United States District Judge Plaintiff Khalifah E.D. Saif'ullah, a California...

40. Diamond S.J. Enterprise, Inc. v. City of San Jose
United States District Court, N.D. California, San Jose Division. | March 02, 2018 | Slip Copy | 2018 WL 11009362

Plaintiff Diamond S.J. Enterprises, dba S.J. Live, brings this action against Defendant City of San Jose to prevent Defendant from enforcing a 30 day suspension of SJ Live's municipal entertainment

permit. The suspension of Plaintiff's entertainment permit begins on March 3, 2018. Before the Court is Plaintiff's motion for a temporary restraining...

...FOR TEMPORARY RESTRAINING ORDER Re: Dkt. No. 15 LUCY H. KOH , United States District Judge Plaintiff Diamond S.J. Enterprises, dba S.J...

41. Johnson v. San Benito County

United States District Court, N.D. California, San Jose Division. | December 03, 2013 | Not Reported in Fed. Supp. | 2013 WL 6248274

Plaintiff Brett Johnson ("Plaintiff") brings this action against Defendants San Benito County, Patrick Turturici, and Tony Lamonica ("Defendants") for alleged violations of 42 U.S.C. §1983. Before the Court are Defendants' Motions for Summary Judgment, which are fully briefed. After considering the...

...Defendants. ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT LUCY H. KOH , United States District Judge Plaintiff Brett Johnson ("Plaintiff") brings this...

42. Saif'ullah v. Albritton

United States District Court, N.D. California, San Jose Division. | December 21, 2017 | Not Reported in Fed. Supp. | 2017 WL 6558719

Plaintiff Khalifah E.D. Saif'ullah, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983. On August 29, 2017, defendants Associate Warden S.R. Albritton ("Albritton") and Correctional Lieutenant R. Kluger ("Kluger") filed a motion for summary judgment. Plaintiff has...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 51 LUCY H. KOH , United States District Judge Plaintiff Khalifah E.D. Saif'ullah, a California...

43. Washington v. Sandoval

United States District Court, N.D. California. | March 22, 2012 | Not Reported in F.Supp.2d | 2012 WL 987291

Plaintiff, currently incarcerated at Corcoran State Prison and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants Sandoval, Sandquist, and Townsend were deliberately indifferent to his safety, and retaliated against him during his incarceration at Salinas Valley State Prison ("SVSP")....

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. KOH , District Judge. Plaintiff, currently incarcerated at Corcoran State Prison and...

44. Ardalan v. McHugh

United States District Court, N.D. California, San Jose Division. | November 27, 2013 | Not Reported in Fed. Supp. | 2013 WL 6212710

Plaintiff Ferial Karen Ardalan (“Ardalan”) brings this Complaint against Defendants John McHugh, Secretary of the Army (“McHugh”); United States Representative Sam Farr (“Farr”); and Carlton Hadden, Director of the Office of Federal Operations of the United States Equal Employment Opportunity...

...DISMISS AND DENYING PLAINTIFF'S MOTIONS FOR DEFAULT JUDGMENT LUCY H. KOH , United States District Judge Plaintiff Ferial Karen Ardalan (“Ardalan”) brings...

45. Steshenko v. Gayrard

United States District Court, N.D. California, San Jose Division. | May 20, 2014 | 44 F.Supp.3d 941 | 2014 WL 2120837

EDUCATION — Abuse and Harassment. Graduate school applicant's age discrimination claims were deniable as not actionable.

Synopsis
Background: Graduate school applicant filed civil rights suit against board of trustees for state university and two heads of graduate programs, claiming that denial of his application for two graduate programs was based on age discrimination in violation of Age Discrimination Act (ADA), Age Discrimination in Employment Act (ADEA), and California Fair Employment and Housing Act (FEHA), retaliation for speech in violation of First Amendment pursuant to 1983 and California's Bane Act, denial of due process and equal protection under Fourteenth Amendment pursuant to 1983 and Bane Act, conspiracy to interfere with civil rights, and intentional infliction of emotional distress. Defendants moved to dismiss for failure to state claim.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 Eleventh Amendment immunity barred claims against board;
2 ADA claim was not actionable;
3 ADEA claim was not actionable;
4 First Amendment retaliation claim was not sufficiently alleged;
5 due process and equal protection claims were foreclosed; and
6 conspiracy claim was not sufficiently alleged.
Motion granted.

...CA, for Defendants. ORDER GRANTING MOTION TO DISMISS LUCY H. KOH , United States District Judge [1] [2] [3] Plaintiff Gregory Nicholas...

1. Chavez v. Wynar

United States District Court, N.D. California, San Jose Division. | November 08, 2019 | 421 F.Supp.3d 891 | 2019 WL 5864618

CRIMINAL JUSTICE — Searches and Seizures. Allegations that federal **agent** subjected employees to coerced questioning after search of business had concluded, alleged violation of clearly established right against unreasonable detention.

Synopsis
Background: Corporation and individual employees brought action against federal **agent**, asserting *Bivens* claims for violations of Fourth and Fifth Amendments related to **agent's** actions during investigation and execution of search warrant at business's office, during which employees were detained. **Agent** moved to dismiss for failure to state claim.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 employees failed to allege that **agent's** use of handcuffs to detain them while executing search warrant on business's premises violated any clearly established right against use of excessive force;
2 employees stated claim that **agent's** act of pointing gun at them after they were handcuffed, under control, and fully cooperative violated their clearly established right against use of excessive force;
3 employees stated claim that **agent's** act of detaining and subjecting them to coerced questioning after search of business had concluded violated their clearly established right against unreasonable detention;
4 employee failed to allege that **agent's** conduct in temporarily denying her access to her shoes and clothing during search violated her clearly established right against unreasonable detention; and
5 employee stated claim that **agent's** conduct in denying her use of her cell phone after search of business's premises had concluded violated her clearly established right against unreasonable detention.
Motion granted in part and denied in part.

...2019 Background: Corporation and individual employees brought action against federal **agent**, asserting Bivens claims for violations of Fourth and Fifth Amendments related to **agent's** actions during investigation and execution of search warrant at business's office, during which employees were detained. **Agent** moved to dismiss for failure to state claim. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) employees failed to allege that **agent's** use of handcuffs to detain them while executing search warrant...

...against use of excessive force; (2) employees stated claim that **agent's** act of pointing gun at them after they were handcuffed...

...against use of excessive force; (3) employees stated claim that **agent's** act of detaining and subjecting them to coerced questioning after...

2. Chavez v. Wynar

United States District Court, N.D. California, San Jose Division. | April 28, 2021 | --- F.Supp.3d ---- | 2021 WL 1668053

CRIMINAL JUSTICE — Arrest. **Agent's** act of handcuffing employees of business being investigated for fraudulent practices while employees had guns pointed at them did not constitute excessive force under Fourth Amendment.

Synopsis
Background: Employees of business being investigated for fraudulent practices brought action against federal **agent**, asserting *Bivens* claims for violations of Fourth Amendments related to **agent's** actions during investigation and execution of search warrant at business's office, during which employees were detained. **Agent** moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:

1 fact issues precluded summary judgment on claim that employee was detained incommunicado;
2 fact issues precluded summary judgment on claim that **agent** deprived employee of her cell phone;
3 employees failed to establish that detention was not conducted in reasonable manner; and
4 **agent's** act of handcuffing employees of business being investigated for fraudulent practices while employees had guns pointed at them did not constitute excessive force under Fourth Amendment.
Motion granted in part and denied in part.

...business being investigated for fraudulent practices brought action against federal **agent**, asserting Bivens claims for violations of Fourth Amendments related to **agent's** actions during investigation and execution of search warrant at business's office, during which employees were detained. **Agent** moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) fact issues precluded summary judgment on...

...incommunicado; (2) fact issues precluded summary judgment on claim that **agent** deprived employee of her cell phone; (3) employees failed to...

...that detention was not conducted in reasonable manner; and (4) **agent's** act of handcuffing employees of business being investigated for fraudulent...

3. Life Savers Concepts Association of California v. Wynar

United States District Court, N.D. California, San Jose Division. | May 16, 2019 | 387 F.Supp.3d 989 | 2019 WL 2144630

CIVIL RIGHTS — Searches and Seizures. Allowing corporation to bring Bivens suit on behalf of employees was new Bivens context for which there were alternative remedial structures.

Synopsis
Background: Corporation and individual employees brought action against federal **agents** and other individuals, asserting *Bivens* claims for violations of the First, Fourth, Fifth, and Fourteenth Amendments related to **agent's** actions during investigation and execution of search warrant at business's office, during which employees were detained. Defendants moved to dismiss.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 *Bivens* did not provide remedy for corporate plaintiff's claims;
2 individual plaintiffs lacked standing to assert First Amendment claim centered around **agent's** alleged appearance at a meeting;
3 individual plaintiffs failed to state First Amendment claim based on **agent's** alleged abusive conduct during execution of search warrant;
4 individual plaintiffs failed to state a claim for violation of their Fifth Amendment rights;
5 individual plaintiff plausibly alleged that **agent** forced an interrogation in violation of her constitutional rights; and
6 individual plaintiffs failed to allege with particularity that **agent** violated their Fourth Amendment rights with excessive force and unreasonable detentions.
Motion granted in part and denied in part.

...2019 Background: Corporation and individual employees brought action against federal **agents** and other individuals, asserting Bivens claims for violations of the First, Fourth, Fifth, and Fourteenth Amendments related to **agent's** actions during investigation and execution of search warrant at business's...

...Defendants moved to dismiss. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) Bivens did not provide remedy for...

...plaintiffs lacked standing to assert First Amendment claim centered around **agent's** alleged appearance at a meeting; (3) individual plaintiffs failed to state First Amendment claim based on **agent's** alleged abusive conduct during execution of search warrant; (4) individual...

4. Ciampi v. City of Palo Alto

United States District Court, N.D. California, San Jose Division. | May 11, 2011 | 790 F.Supp.2d 1077 | 2011 WL 1793349

CRIMINAL JUSTICE - Arrest. **Officers'** use of taser in drive-stun mode against arrestee did not violate arrestee's Fourth Amendment rights.

Synopsis
Background: Arrestee brought action against city and current and former employees of city police department, alleging under 1983 that **officers'** use of stun guns to subdue arrestee was excessive, in violation of Fourth Amendment, and asserting related state-law claims. Defendants moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 newspaper articles submitted by arrestee were relevant;
2 **officers'** use of ruse to remove arrestee from his van violated Fourth Amendment;
3 **officers** were entitled to **qualified immunity** from unlawful seizure claim arising out of **officers'** use of ruse to remove arrestee from van;
4 **officers** had reasonable suspicion that arrestee was under influence of controlled substances, so as to justify brief, investigatory detention;
5 **officers** were entitled to **qualified immunity** from excessive force claim arising out of their use of stun gun in dart mode;
6 **officers'** use of force in deploying stun gun in drive-stun mode was not excessive; and
7 arrestee could not sustain 1983 municipal liability claim.
Motion for summary judgment granted in part and denied in part.

...entity Lynne Johnson , an individual; Chief Dennis Burns , an individual; **Officer** Kelly Burger , an individual; **Officer** Manuel Temores , an individual; **Officer** April Wagner , an individual; **Agent** Dan Ryan Sergeant Natasha Powers, individual , Defendants. Case No.09...

...employees of city police department, alleging under §1983 that **officers'** use of stun guns to subdue arrestee was excessive, in...

...moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) newspaper articles submitted by arrestee were relevant; (2) **officers'** use of ruse to remove arrestee from his van violated Fourth Amendment; (3) **officers** were entitled to **qualified immunity** from unlawful seizure claim arising out of **officers'** use of ruse to remove arrestee from van; (4) **officers** had reasonable suspicion that arrestee was under influence of controlled...

5. Nunez v. City of San Jose

United States District Court, N.D. California, San Jose Division. | May 23, 2019 | 381 F.Supp.3d 1192 | 2019 WL 2232673

CIVIL RIGHTS — Excessive Force. California city police **officers** who fatally shot individual did not deny him medical care in violation of Fourth Amendment.

Synopsis
Background: Father and estate of son brought action against California city and, individually and in their official capacities, city police **officers** following **officers'** fatal shooting of son, asserting 1983 claims against **officers** for excessive force and denial of medical care in violation of Fourth Amendment and deprivation of right to familial relationship in violation of Fourteenth Amendment, *Monell* claim against city, and California-law wrongful death negligence claim against **officers** and, vicariously, city. **Officers** and city moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 genuine issues of material fact precluded summary judgment on excessive force claim;
2 **officers** had not denied son medical care in violation of Fourth Amendment;
3 genuine issues of material fact precluded summary judgment on right to familial relationship claim;

4 city was not liable on *Monell* claim; but
5 genuine issues of material fact precluded summary judgment on wrongful death negligence claim.
Motion granted in part and denied in part.

...city and, individually and in their official capacities, city police **officers** following **officers**' fatal shooting of son, asserting § 1983 claims against **officers** for excessive force and denial of medical care in violation...

...against city, and California-law wrongful death negligence claim against **officers** and, vicariously, city. **Officers** and city moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) genuine issues of material fact precluded summary judgment on excessive force claim; (2) **officers** had not denied son medical care in violation of Fourth...

...held gun and had pointed it at California city police **officers** at time that **officers** had fatally shot him precluded summary judgment for **officers** on § 1983 claim by father and estate of son...

6. Hernandez v. City of San Jose

United States District Court, N.D. California, San Jose Division. | March 14, 2017 | 241 F.Supp.3d 959 | 2017 WL 977047

CIVIL RIGHTS — Due Process. Attendees of presidential candidate's rally who were directed toward protesters sufficiently alleged that police violated their due process rights.

Synopsis
Background: Attendees of rally for presidential candidate brought putative class action against city, police chief, and police **officers** alleging that **officers** directed attendees towards a group of anti-candidate protesters and prevented them from proceeding away from protesters, asserting 1983 claims for deliberate indifference and municipal liability, and state law claims for violations of the Bane Act and negligence. Defendants moved to dismiss.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 attendees failed to allege that police chief acted with deliberate indifference in devising crowd-control plan for rally;
2 attendees sufficiently alleged that police **officers** took an affirmative action that exposed attendees to a danger that they would not have otherwise faced, for purposes of due process claim;
3 attendees sufficiently stated claim against **officers** for violation of due process under state-created danger doctrine;
4 **officers** were not entitled to **qualified immunity** from 1983 claims for violation of due process under state-created danger doctrine;
5 attendees failed to identify city policy of unconstitutionally exposing people to danger by third parties, as would support claim for municipal liability;
6 attendees failed to state claim for municipal liability under 1983 for failure to train;
7 allegations were sufficient to state claim that city was liable under 1983 for **officers**' allegedly unconstitutional actions in directing attendees along particular path after realizing that doing so placed attendees in danger; but
8 allegations were insufficient to state claim for violation of Bane Act.
Motion granted in part and denied in part.

...brought putative class action against city, police chief, and police **officers** alleging that **officers** directed attendees towards a group of anti-candidate protesters and...

...Defendants moved to dismiss. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) attendees failed to allege that police...

...control plan for rally; (2) attendees sufficiently alleged that police **officers** took an affirmative action that exposed attendees to a danger...

7. Adams v. Kraft

United States District Court, N.D. California, San Jose Division. | October 25, 2011 | 828 F.Supp.2d 1090 | 2011 WL 5079528

CIVIL RIGHTS - Attorney Fees. Genuine issue of material fact existed as to whether state park rangers had probable cause to arrest.

Synopsis
Background: Arrestee brought 1983 action against state park rangers, alleging violations of the First and Fourth Amendments, as well as the California Constitution. Rangers filed motion for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 genuine issue of material fact existed as to whether state park rangers had probable cause to arrest;
2 genuine issue of material fact existed as to the nature and quality of intrusion against arrestee;
3 genuine issue of material fact existed as to whether arrestee was a threat to state park rangers;
4 genuine issue of material fact existed as to whether arrestee was actively resisting arrest;
5 genuine issue of material fact existed as to whether arrestee engaged in constitutional protected speech;
6 genuine issue of material fact existed as to whether state park ranger had retaliatory intent in performing arrest; and
7 genuine issue of material fact existed as to whether state park rangers acted with evil motive or intent, or with malice during arrest.
Motion granted in part and denied in part.

...motion for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) genuine issue of material fact...

...1983 false arrest claim, a plaintiff must demonstrate that the **officers** lacked probable cause to arrest him. U.S.C.A. Const.Amend. 4 42...

...1983 [3] 35 Arrest 35II On Criminal Charges 35 63 **Officers** and Assistants, Arrest Without Warrant 35 63 . 4 Probable or Reasonable...

8. Obas v. County of Monterey

United States District Court, N.D. California, San Jose Division. | February 22, 2011 | Not Reported in F.Supp.2d | 2011 WL 738159

CIVIL RIGHTS - Arrest and Detention. Fact issue existed as to whether it was objectively unreasonable for the police **officers** to force the arrestee to walk to the patrol car.

...as to whether it was objectively unreasonable for the police **officers** to force the arrestee to walk to the patrol car...

...expressed pain when set upon his feet, repeatedly told the **officers** he could not walk, and experienced severe pain when forced...

...patrol car, the arrestee expressed so much pain that the **officers** took him to the hospital, where the hospital staff discovered...

9. Novin v. Fong

United States District Court, N.D. California, San Jose Division. | December 08, 2014 | Not Reported in Fed. Supp. | 2014 WL 6956923

Plaintiffs Abdol Novin and Pooya Pournadi (collectively, “Plaintiffs”) bring this case against Gail Fong, Robert Cook, and the California Department of Motor Vehicles (collectively, “Defendants”) for violations of 42 U.S.C. §1983 (“§1983”), intentional interference with prospective...

...CA, for Defendants. ORDER GRANTING MOTION TO DISMISS LUCY H. **KOH** , United States District Judge Plaintiffs Abdol Novin and Pooya Pournadi...

...the DMV's immunity under the Eleventh Amendment, Cook and Fong's **qualified immunity** to damages suits under §1983 , and state law licensing...

...named as the defendant, but also certain actions against state **agents** and state instrumentalities.” Regents of the Univ. of Cal. v...

10. Bermudez v. Ware

United States District Court, N.D. California, San Jose Division. | February 04, 2011 | Not Reported in F.Supp.2d | 2011 WL 445832

Plaintiff filed a “Criminal Complaint” against a number of current and former federal judges, United States Attorneys, Assistant United States Attorneys, and an IRS Special **Agent**. The United States of America, appearing as amicus curiae, now seeks dismissal of the action for failure to state a claim pursuant to Federal Rule of Civil Procedure...

...CA, for Defendants. ORDER DISMISSING CASE WITH PREJUDICE LUCY H. **KOH** , District Judge. Plaintiff filed a “Criminal Complaint” against a number...

...States Attorneys, Assistant United States Attorneys, and an IRS Special **Agent**. The United States of America, appearing as amicus curiae, now...

...States Attorneys Jeffrey Schenk and Brian Stretch; and IRS Special **Agent** Quyen Madrigal. The Complaint itself is entitled “Criminal Complaint, Affidavit...

11. Inman v. Anderson

United States District Court, N.D. California, San Jose Division. | February 27, 2018 | 294 F.Supp.3d 907 | 2018 WL 1071158

CIVIL RIGHTS — Immunity. County prosecutor was not entitled to absolute prosecutorial immunity from arrestee's § 1983 claim for illegal seizure.

Synopsis
Background: Arrestee brought 1983 action against city, city police **officers**, county, and Assistant District Attorney (ADA) employed by county, alleging that he was falsely arrested for annoying or molesting a child in violation of California law, and that defendants conspired to seize him and deny him substantive due process. Defendants moved to dismiss for failure to state claim, and city defendants moved for more definite statement.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 arrestee's 1983 claim that ADA's alleged continuation of prosecution with insufficient evidence violated his Fourth Amendment rights was barred by absolute prosecutorial immunity;
2 ADA was not entitled to absolute prosecutorial immunity from arrestee's 1983 claim based on failure to return property;
3 ADA's alleged conspiracy with **officers** to present false and misleading probable cause statement in support of warrant to search arrestee's home, if proven, was protected by absolute prosecutorial immunity;
4 arrestee failed to allege existence and content of county's investigatory policy that allegedly caused unconstitutional search and arrest of arrestee;

5 arrestee failed to allege that ADA's alleged failure to return arrestee's property was achieved by threats, intimidation, or coercion, as required to state claim under California's Bane Act;
6 arrestee failed to state claim against **officers** under Bane Act; and
7 arrestee's allegations against **officers** were not so vague or ambiguous as to justify more definite statement.
Motions granted in part and denied in part.

...Background: Arrestee brought § 1983 action against city, city police **officers**, county, and Assistant District Attorney (ADA) employed by county, alleging...

...for more definite statement. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) arrestee's § 1983 claim that ADA's...

...on failure to return property; (3) ADA's alleged conspiracy with **officers** to present false and misleading probable cause statement in support...

12. Bonty v. Ramsey

United States District Court, N.D. California. | December 19, 2011 | Not Reported in F.Supp.2d | 2011 WL 6330656

Plaintiff Miles O. Bonty, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at Salinas Valley State Prison ("SVSP"), including Defendants Correctional Sergeant Battles, Correctional Lieutenant J. Stevenson, and Correctional **Officers** J. Ramsey, N. Reese., and D. Vega. Plaintiff...

...States District Court, N.D. California. Miles O. BONTY , Plaintiff, v. **Officer** J. RAMSEY, et al., Defendants. No. C 10–5360 LHK...

...SURREPLY; AND GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff Miles O. Bonty, proceeding pro se, filed...

...Defendants Correctional Sergeant Battles, Correctional Lieutenant J. Stevenson, and Correctional **Officers** J. Ramsey, N. Reese., and D. Vega. Plaintiff maintains that...

13. Nunez v. Santos

United States District Court, N.D. California, San Jose Division. | December 13, 2019 | 427 F.Supp.3d 1165 | 2019 WL 6828370

CIVIL RIGHTS — Excessive Force. Police **officers** who fatally shot victim did not have **qualified immunity** in § 1983 action alleging excessive force.

Synopsis
Background: Decedent's father and estate brought 1983 action against **officers** involved in fatal shooting of decedent, alleging excessive force and violation of right to familial relationship, and also alleging California wrongful death claim. After jury returned verdict in favor of estate on excessive force and wrongful death claims, **officers** filed renewed motion for judgment as a matter of law and alternative motion for new trial or remittitur.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 evidence was sufficient to support finding that victim did not point his gun at **officers**;
2 evidence did not compel finding that police **officers** made reasonable mistake of fact in perceiving that victim pointed a gun at **officers**;
3 **officers** did not have **qualified immunity**;
4 evidence sufficient to support jury finding that victim suffered significant pain and suffering; and
5 evidence did not establish that jury award of $2.6 million in pain and suffering damages was product of sympathy, passion, or prejudice.
Motions denied.

...Background: Decedent's father and estate brought § 1983 action against **officers** involved in fatal shooting of decedent, alleging excessive force and...

...favor of estate on excessive force and wrongful death claims, **officers** filed renewed motion for judgment as a matter of law...

...new trial or remittitur. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) evidence was sufficient to support finding that victim did not point his gun at **officers**; (2) evidence did not compel finding that police **officers** made reasonable mistake of fact in perceiving that victim pointed a gun at **officers**; (3) **officers** did not have **qualified immunity**; (4) evidence sufficient to support jury finding that victim suffered...

14. Belinda K. v. County of Alameda

United States District Court, N.D. California, San Jose Division. | July 08, 2011 | Not Reported in F.Supp.2d | 2011 WL 2690356

On December 21, 2010, Belinda K. (Plaintiff), proceeding pro se, filed a complaint alleging 20 causes of action against 23 named defendants on behalf of herself and her minor son, J.H. See Compl. (Dkt. No. 1). Plaintiff's Complaint alleges that her minor son was taken from her custody on the basis of falsified, misleading and incomplete information...

...filed under seal and served on the parties. LUCY H. **KOH** , District Judge. I. INTRODUCTION On December 21, 2010, Belinda K...

...San Leandro and City of San Leandro Police Department employees **Officer** Wong, Detective Luis Torres, Sergeant Decosta, and Kamilah Jackson. A...

...this information, employees of the San Leandro Police Department including **Officers** Wong, Jackson and DeCosta removed J.H. from his school and...

15. Hernandez v. City of San Jose

United States District Court, N.D. California, San Jose Division. | September 17, 2019 | Not Reported in Fed. Supp. | 2019 WL 4450930

This case arises out of the June 2, 2016 rally for then-presidential candidate Donald J. Trump that took place at the McEnery Convention Center in downtown San Jose, California (the "Rally"). ECF No. 35 ("FAC") ¶ 63. Twenty named plaintiffs bring this putative class action on behalf of themselves and all others...

...MOTION FOR CLASS CERTIFICATION Re: Dkt. No. 125 LUCY H. **KOH** , United States District Judge This case arises out of the...

...Plaintiffs") against The City of San Jose and various individual **officers** of the San Jose Police Department ("SJPD") (collectively, "Defendants"). Plaintiffs...

...are The City of San Jose (the "City") and SJPD **officers** Loyd Kinsworthy, Lisa Gannon, Kevin Abruzzini, Paul Messier, Paul Spagnoli...

16. Bagley v. City of Sunnyvale

United States District Court, N.D. California, San Jose Division. | January 24, 2017 | Not Reported in Fed. Supp. | 2017 WL 344998

Plaintiff Lee Scott Bagley ("Plaintiff") sued the City of Sunnyvale ("Sunnyvale"), **Officer** Jeromy Lima ("**Officer** Lima") (collectively, the "Sunnyvale Defendants"), and the County of Santa Clara ("Santa Clara") pursuant to 42 U.S.C. §1983 for violation of Plaintiff's...

...IN PART AND DENYING IN PART CITY OF SUNNYVALE AND **OFFICER** LIMA'S MOTION TO DISMISS LUCY H. **KOH** , United States District Judge Plaintiff Lee Scott Bagley ("Plaintiff") sued the City of Sunnyvale ("Sunnyvale"), **Officer** Jeromy Lima (" **Officer** Lima") (collectively, the "Sunnyvale Defendants"), and the County of Santa...

...of Plaintiff's claims arise from the alleged actions of police **officers** during Plaintiff's arrest on December 22, 2012. The remainder of...

...arrest. 1.Plaintiff's Arrest On December 22, 2012, Sunnyvale police **officers** allegedly "came to arrest [Plaintiff] without a warrant" at Plaintiff's...

17. Ryan v. Santa Clara Valley Transportation Authority

United States District Court, N.D. California, San Jose Division. | March 30, 2017 | Not Reported in Fed. Supp. | 2017 WL 1175596

Plaintiff Joseph Ryan ("Plaintiff") sues Defendants Santa Clara Valley Transportation Authority ("SCVTA") and Joseph Fabela ("Fabela") (collectively, "Defendants"). ECF No. 37. Before the Court is Defendants' motion to dismiss. ECF No. 41 ("Mot."). Having considered the submissions of the...

...PART MOTION TO DISMISS Re: Dkt. No. 41 LUCY H. **KOH** , United States District Judge Plaintiff Joseph Ryan ("Plaintiff") sues Defendants...

...5–13. Defendants also assert that Fabela is entitled to **qualified immunity**. Id. at 17 The Court first addresses whether Plaintiff has...

...and then the Court considers whether Fabela is entitled to **qualified immunity**. a.Whether Plaintiff has Stated a Plausible Claim against Fabela...

18. Gomez v. Fachko

United States District Court, N.D. California, San Jose Division. | April 30, 2021 | Slip Copy | 2021 WL 1721067

Plaintiff Omar Gomez brings this excessive force action against the City of Santa Clara and City of Santa Clara police **officer** Jordan Fachko ("Defendants") under 42 U.S.C. § 1983. ECF No. 1. Before the Court is Defendants' motion for summary judgment, ECF No. 50. Having considered the parties' submissions, the relevant...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 50 LUCY H. **KOH** , United States District Judge Plaintiff Omar Gomez brings this excessive...

...City of Santa Clara and City of Santa Clara police **officer** Jordan Fachko ("Defendants") under 42 U.S.C. § 1983 ECF No...

...3d 1167, 1171 (9th Cir. 2020) (at summary judgment on **qualified immunity**, requiring the Court to credit plaintiff's version of events unless...

19. Smith v. City of Santa Clara

United States District Court, N.D. California, San Jose Division. | January 15, 2013 | Not Reported in F.Supp.2d | 2013 WL 164191

Plaintiffs Josephine Smith and A.S., a minor appearing through her guardian ad litem, bring this action seeking damages against the City of Santa Clara, the City of Santa Clara Police Department, Detective Kenneth Henderson, Sergeant Greg Hill, and Clay Rojas pursuant to 42 U.S.C. § 1983, California Civil Code §§ 52.1–3, and several state common...

...IN PART DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiffs Josephine Smith and A.S., a minor appearing...

...Amendment rights. Finally, Plaintiff alleges that the conduct of the **officers** who searched her home constituted assault, battery, negligence, and negligent...

...Detective Michael Carlton (not a defendant here), one of the **officers** dispatched to respond to the stabbing incident, discovered that Justine...

20. Sandoval v. Lewis

United States District Court, N.D. California. | February 06, 2017 | Not Reported in Fed. Supp. | 2017 WL 487025

Plaintiff, a California prisoner proceeding pro se, has filed a civil rights complaint, pursuant to 42 U.S.C. §1983. In the complaint, plaintiff alleges that defendants were deliberately indifferent to his safety. Defendants J. Frisk, Warden G. Lewis, and D. Barneburg have filed a motion to dismiss based on the failure to exhaust....

...SUMMARY JUDGMENT; DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION LUCY H. **KOH** UNITED STATES DISTRICT JUDGE Plaintiff, a California prisoner proceeding pro...

...was finished, he was supposed to let the control booth **officer** know so that plaintiff could be released from his cell...

...next inmate to use. Compl. ¶14. The control booth **officer** is responsible for releasing inmates from their cells for purposes...

21. Hernandez v. City of San Jose

United States District Court, N.D. California, San Jose Division. | October 13, 2016 | Not Reported in Fed. Supp. | 2016 WL 5944095

Plaintiffs Juan Hernandez, Nathan Velasquez, Frank Velasquez, Rachel Casey, Mark Doering, Mary Doering, Barbara Arigoni, Dustin Haines-Scrodin, Andrew Zambetti, Christina Wong, Craig Parsons, the minor I.P., Greg Hyver, and Todd Broome (collectively, "Plaintiffs") bring this putative class action against Defendants the City of San Jose...

...PART MOTION TO DISMISS Re: Dkt. No. 6 LUCY H. **KOH** , United States District Judge Plaintiffs Juan Hernandez, Nathan Velasquez, Frank...

...were leaving the building, San Jose police and other police **officers** directed Plaintiffs from the east-northeast exit of the Convention...

...138–39, 145. During these attacks, Plaintiffs allege that police **officers** directed Plaintiffs into dangerous areas and deliberately did not intervene...

22. Adams v. Kraft

United States District Court, N.D. California, San Jose Division. | March 08, 2011 | Not Reported in F.Supp.2d | 2011 WL 846065

Plaintiff Berry Lynn Adams filed his First Amended Complaint (Dkt. No. 80, "FAC") on December 6, 2010. Defendants Best, Bockman, Callison, Hauck, Kraft, Lingenfelter, Sipes, and Stone (collectively "Defendants") move to dismiss Adams' FAC pursuant to Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 81 ("Mot."); see also Dkt. No. 91 ("Reply")....

...AND DENYING IN PART DEFENDANTS. MOTION TO DISMISS LUCY H. **KOH** , District Judge. Plaintiff Berry Lynn Adams filed his First Amended...

...maintain a § 1983 claim for retaliatory prosecutions against investigating **officers** who wrongfully caused the prosecution, 2 the Court is not...

...A] warrantless arrest satisfies the Constitution so long as the **officer** has probable cause to believe that the suspect has committed...

23. Smith v. County of Santa Cruz

United States District Court, N.D. California, San Jose Division. | June 17, 2019 | Not Reported in Fed. Supp. | 2019 WL 2515841

Plaintiffs Ian Smith, Thanh-Thanh Hoang and Savannah Smith (collectively, "Plaintiffs") brought suit against Defendants County of Santa Cruz, Santa Cruz Sheriff Jim Hart ("Sheriff Hart"), Santa Cruz County Sergeant Jacob Ainsworth ("Sergeant Ainsworth"), Santa Cruz Deputy Chris Vigil ("Deputy Vigil"),...

...Law Group, Scotts Valley, CA, for Defendants City of Capitola, **Officer** Pedro Zamora Noah G. Blechman , McNamara, Ney, Beatty, Slattery, Borges...

...FOR SUMMARY JUDGMENT Re: Dkt. Nos. 109, 111 LUCY H. **KOH** , United States District Judge Plaintiffs Ian Smith, Thanh-Thanh Hoang...

...and Defendants City of Capitola and Capitola Police Department ("CPD") **Officer** Pedro Zamora (" **Officer** Zamora") (collectively, "Capitola Defendants") for the shooting of Plaintiffs' son...

24. Quiroz v. Short

United States District Court, N.D. California. | March 31, 2015 | 85 F.Supp.3d 1092 | 2015 WL 1482744

CIVIL RIGHTS — Prisons. Prison official did not have retaliatory motive in investigating administrative grievance of prisoner who had previously filed civil rights lawsuit.

Synopsis
Background: State prisoner, proceeding pro se, brought action against prison officials, alleging, inter alia, that officials retaliated against prisoner for filing prior federal civil rights complaint and for participating in another inmate's civil rights suit. One official moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 official did not have retaliatory motive in investigating administrative grievance;

2 prisoner's assertion that one of official's duties was to monitor incoming and outgoing mail was insufficient to show that official destroyed two specific pieces of prisoner's mail;
3 genuine issue of material fact existed as to whether official acted with retaliatory motive when he sent to prisoner's fiance a letter intended for other woman;
4 genuine issue of material fact existed as to whether prison official acted with retaliatory motive when he issued rules violation report (RVR) against prisoner;
5 official was entitled to **qualified immunity** on prisoner's right to intimate association claim;
6 official's act of sending to prisoner's fiance a letter intended for other woman did not prevent prisoner from continuing to associate with fiance;
7 official's act of sending to prisoner's fiance a letter intended for other woman did not prevent prisoner from marrying fiance; and
8 genuine issue of material fact existed as to whether officials had agreement to retaliate against prisoner by issuing RVR against him.
Motion granted in part and denied in part.

...moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) official did not have retaliatory motive...

...violation report (RVR) against prisoner; (5) official was entitled to **qualified immunity** on prisoner's right to intimate association claim; (6) official's act...

...Good Faith and Probable Cause 78 1376 Government Agencies and **Officers** 78 1376(2) k. Good faith and reasonableness; knowledge and...

25. J.A.L. v. Santos

United States District Court, N.D. California, San Jose Division. | March 10, 2016 | Not Reported in Fed. Supp. | 2016 WL 913743

Plaintiff J.A.L. ("Plaintiff"), a minor, brings this action against Defendants Sergeant Michael Santos ("Sgt. Santos") and **Officer** Frits Van der Hoek ("**Officer** Van der Hoek") (collectively, "Defendants"). Before the Court is Defendants' motion for summary judgment. ECF No. 29. Having considered the...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 29 LUCY H. **KOH** , United States District Judge Plaintiff J.A.L. ("Plaintiff"), a minor, brings...

...this action against Defendants Sergeant Michael Santos ("Sgt. Santos") and **Officer** Frits Van der Hoek (" **Officer** Van der Hoek") (collectively, "Defendants"). Before the Court is Defendants...

...at 50:2-3, 52:15-19, 53:5-6. **Officer** Van der Hoek arrived at the scene shortly thereafter, while...

26. Harrell v. City of Gilroy

United States District Court, N.D. California, San Jose Division. | February 05, 2019 | Not Reported in Fed. Supp. | 2019 WL 452039

Before the Court is Defendants City of Gilroy, Gilroy Police Department ("City Defendants"), Gilroy Police Chief Denise Turner, Captain Joseph Deras, Captain Kurt Svardal, Communications Supervisor Steven Ynzunza, and Human Resources Director/Risk Manager LeeAnn McPhillips' ("Individual Defendants") (collectively,...

...DEFENDANTS' MOTION TO DISMISS Re: Dkt. No. 78 LUCY H. **KOH** , United States District Judge Before the Court is Defendants City...

...23. Harrell alleges a range of sexual misconduct, including police **officers** having sex with members of the Gilroy Explorers, a group...

...shift 14 minutes early because a call came in that **Officer** Ray Hernandez, a close friend of Harrell's, was unconscious and...

27. Wilkins v. Alameda County

United States District Court, N.D. California. | October 07, 2014 | Not Reported in Fed. Supp. | 2014 WL 5035445

Plaintiff, a California state prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. §1983. Plaintiff has been granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the court dismisses some defendants, and orders service upon the others. A federal court must...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , United States District Judge Plaintiff, a California state prisoner proceeding...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...provides a cause of action for preventing or impeding an **officer** of the United States from performing his or her duties...

28. Treglia v. Kernan

United States District Court, N.D. California. | August 15, 2013 | Not Reported in Fed. Supp. | 2013 WL 4427253

Plaintiff, a state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. §1983 challenging the conditions of his confinement at Pelican Bay State Prison ("PBSP"). The court screened plaintiff's amended complaint and found that plaintiff stated cognizable claims of: (1)...

...TO DISMISS; FURTHER BRIEFING (Docket Nos. 16, 31) LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...claim against him, for failure to exhaust, and based on **qualified immunity**. Plaintiff has filed an opposition, and Warden Lewis has filed...

...failure to state a claim against him, and based on **qualified immunity**. Plaintiff has filed an opposition. Although directed to do so...

29. Peoples v. Zeidan

United States District Court, N.D. California. | August 20, 2018 | Not Reported in Fed. Supp. | 2018 WL 3995917

Plaintiff, a California prisoner proceeding pro se, filed a second amended civil rights complaint, pursuant to 42 U.S.C. §1983. The court found that plaintiff stated the following cognizable claims: (1) defendants **Officer** Zeidan and **Officer** Branch used excessive force on plaintiff; (2) defendants Inspector Soler, Detective Wentz,...

...PROSECUTE Re: Dkt. Nos. 65, 68, 72, 73 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California prisoner proceeding pro...

...found that plaintiff stated the following cognizable claims: (1) defendants **Officer** Zeidan and **Officer** Branch used excessive force on plaintiff; (2) defendants Inspector Soler, Detective Wentz, Sergeant

Decious, Inspector Jung, **Officer** Zeidan, **Officer** Branch, and **Officer** Mandell violated plaintiff's Fourth Amendment right against unlawful arrest; (3) defendants Sergeant Decious, Inspector Jung, **Officer** Zeidan, **Officer** Branch, and **Officer**...

...car to drive away. Pl. Depo. at 30:4-5. **Officers** Branch, Zeidan, and Mandell were sent to the apartment complex...

30. Hernandez v. City of San Jose

United States District Court, N.D. California, San Jose Division. | May 15, 2017 | Not Reported in Fed. Supp. | 2017 WL 2081236

On March 14, 2017, the Court found that San Jose police **officers** Loyd Kinsworthy, Lisa Gannon, Kevin Abruzzini, Paul Messier, Paul Spagnoli, Johnson Fong, and Jason Ta were not entitled to **qualified immunity** and thus denied Defendants' motion to dismiss Plaintiffs' claim against these **officers** under 42 U.S.C. §1983. ECF No. 72, at 35....

...AND STAYING ACTION Re: Dkt. Nos. 82, 84 LUCY H. **KOH** , United States District Judge On March 14, 2017, the Court found that San Jose police **officers** Loyd Kinsworthy, Lisa Gannon, Kevin Abruzzini, Paul Messier, Paul Spagnoli, Johnson Fong, and Jason Ta were not entitled to **qualified immunity** and thus denied Defendants' motion to dismiss Plaintiffs' claim against these **officers** under 42 U.S.C. §1983 ECF No. 72, at 35...

...are the City of San Jose and San Jose police **officers** Loyd Kinsworthy, Lisa Gannon, Kevin Abruzzini, Paul Messier, Paul Spagnoli...

...rally for then-presidential candidate Donald Trump. Id. Individual police **officers** were not yet named in the original complaint, but instead...

31. Harris v. Simental

United States District Court, N.D. California. | July 15, 2013 | Not Reported in Fed. Supp. | 2013 WL 3733429

Plaintiff, a former pretrial detainee proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. §1983. Plaintiff alleges that Defendants **Officer** Juan Simental ("**Officer** Simental") and **Officer** G. Lombardi ("**Officer** Lombardi") used excessive force against him at the Pittsburg police station....

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff, a former pretrial detainee proceeding...

...pursuant to 42 U.S.C. §1983 Plaintiff alleges that Defendants **Officer** Juan Simental (" **Officer** Simental") and **Officer** G. Lombardi (" **Officer** Lombardi") used excessive force against him at the Pittsburg police...

...in a vehicle. (Compl. at 3.) At 11:10 p.m., **Officer** Lombardi noticed that the car had a broken right front...

32. Gonzalez v. Ahmed

United States District Court, N.D. California, San Jose Division. | September 09, 2014 | 67 F.Supp.3d 1145 | 2014 WL 4444292

CIVIL RIGHTS — Prisons. State inmate administratively exhausted his § 1983 Eighth Amendment claim as required by Prison Litigation Reform Act.

Synopsis
Background: State inmate brought 1983 action alleging that prison physicians and chief medical **officer** were deliberately indifferent to his serious medical needs, in violation of his Eighth Amendment rights. Chief medical **officer** moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 inmate administratively exhausted Eighth Amendment claim against chief medical **officer**, and
2 fact issues precluded summary judgment on Eighth Amendment claim against chief medical **officer**. Motion denied.

...§ 1983 action alleging that prison physicians and chief medical **officer** were deliberately indifferent to his serious medical needs, in violation of his Eighth Amendment rights. Chief medical **officer** moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) inmate administratively exhausted Eighth Amendment claim against chief medical **officer**, and (2) fact issues precluded summary judgment on Eighth Amendment claim against chief medical **officer**. Motion denied. Motion for Summary Judgment West Headnotes [1] 78...

...appendicitis, encompassed inmate's § 1983 claim that prison's chief medical **officer** violated his Eighth Amendment rights when he declined to remove...

...him from physician's care, and thus claim against chief medical **officer** was administratively exhausted under the Prison Litigation Reform Act (PLRA); inmate's claim against chief medical **officer** was merely an aspect of inadequate medical treatment claim against...

33. Atterbury v. Daly

United States District Court, N.D. California. | September 20, 2012 | Not Reported in F.Supp.2d | 2012 WL 4343647

Plaintiff, a former civilly committed insanity acquitee, brought this case under 42 U.S.C. § 1983 against Napa State Hospital's ("NSH") Chief of Police, Denise Daly ("Defendant"). The Court ordered service of Plaintiff's amended complaint ("AC") upon Defendant. On February 22, 2012, Defendant filed a motion for summary judgment. Plaintiff filed an...

...Defendant. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a former civilly committed insanity acquitee, brought...

...argues that she is entitled to summary judgment based on **qualified immunity**. I. Retaliation A claim may be stated under § 1983...

...2006) (citation and internal quotation marks omitted). The defense of **qualified immunity** protects "government officials from liability for civil damages insofar as...

34. Abdel-Shafy v. City of San Jose

United States District Court, N.D. California, San Jose Division. | February 12, 2019 | Not Reported in Fed. Supp. | 2019 WL 570759

Plaintiff Alison Yew Abdel-Shafy ("Plaintiff") brings suit against Defendants City of San Jose, San Jose Police Department, San Jose Police **Officer** Juan Garcia, and San Jose Police **Officer** Daniel Akery (collectively, "Defendants"). Before the Court is Defendants' motion to dismiss Plaintiff's Complaint. ECF No. 45...

...STATE CLAIMS WITHOUT PREJUDICE Re: Dkt. No. 45 LUCY H. **KOH** , United States District Judge Plaintiff Alison Yew Abdel-Shafy ("Plaintiff...

...of San Jose, San Jose Police Department, San Jose Police **Officer** Juan Garcia, and San Jose Police **Officer** Daniel Akery (collectively, "Defendants"). Before the Court is Defendants' motion...

...inside the Starbucks. Id. at ¶14. San Jose Police **Officers** Juan Garcia ("Garcia") and Daniel Akery ("Akery") (collectively, " **Officers** ") subsequently entered the Starbucks with Giendi. Id. Giendi identified Plaintiff...

35. Wilkerson v. Grounds

United States District Court, N.D. California. | September 11, 2012 | Not Reported in F.Supp.2d | 2012 WL 4005451

Plaintiff, currently incarcerated at Correctional Training Facility—Central, and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants were deliberately indifferent to his safety. Defendants have filed a motion for summary judgment. Plaintiff has filed an opposition and...

...Defendant. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, currently incarcerated at Correctional Training Facility—Central...

...judgment. Alternatively, Defendants also argue that they are entitled to **qualified immunity**. The defense of **qualified immunity** protects "government officials from liability for civil damages insofar as...

...L.Ed.2d 396 (1982) A court considering a claim of **qualified immunity** must determine: (1) whether the plaintiff has alleged the deprivation...

36. Craig v. County of Santa Clara

United States District Court, N.D. California, San Jose Division. | August 09, 2018 | Not Reported in Fed. Supp. | 2018 WL 3777363

Plaintiff Harue Craig ("Mrs. Craig") brings this suit against Defendants County of Santa Clara and Santa Clara Sheriff's Department Sergeant Douglas Ulrich ("Sgt. Ulrich") (collectively, "Defendants") for the shooting of Eugene Craig. Before the Court is Defendants' motion to summary judgment. ECF No. 49...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 49 LUCY H. **KOH** , United States District Judge Plaintiff Harue Craig ("Mrs. Craig") brings...

...Laguardia Dep. at 27:7-14. The Akimotos told the **officers** that Mrs. Craig sometimes went for walks by herself, but...

...and Reyes. Weyhrauch Dep. at 25:12-26:15. The **officers** requested that dispatch do a firearms check to determine whether...

37. Watkins v. City of San Jose

United States District Court, N.D. California, San Jose Division. | May 04, 2017 | Not Reported in Fed. Supp. | 2017 WL 1739159

Plaintiffs Deviny Buchanan, on behalf of herself and her minor daughter Laniyah Watkins; Sharon Watkins; and Sylvia Buchanan (collectively, "Plaintiffs") bring the instant suit against Defendants City of San Jose, Police **Officer** Ryan Dote, and Police **Officer** James Soh (collectively, "Defendants") for the shooting of Phillip...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 44 LUCY H. **KOH** , United States District Judge Plaintiffs Deviny Buchanan, on behalf of...

...the instant suit against Defendants City of San Jose, Police **Officer** Ryan Dote, and Police **Officer** James Soh (collectively, "Defendants") for the shooting of Phillip Watkins...

...arises from the fatal shooting of Phillip Watkins ("Decedent") by **Officers** Dote and Soh on February 11, 2015. 1.The Parties...

38. Novin v. Cook

United States District Court, N.D. California. | June 02, 2015 | Not Reported in Fed. Supp. | 2015 WL 3488559

Following the Court's Order Granting Defendant's Motion to Dismiss, Plaintiffs Abdol Novin and Pooya Pournadi (collectively, "Plaintiffs") filed a First Amended Complaint against Gail Fong and Robert Cook (collectively, "Defendants") for a violation of 42 U.S.C. §1983 ("§1983"). See...

...Defendants. ORDER GRANTING MOTION TO DISMISS WITH PREJUDICE LUCY H. **KOH** , United States District Judge Following the Court's Order Granting Defendant's...

...process violation; and (3) Cook and Fong are entitled to **qualified immunity**. The Court addresses each of these arguments below, and finds...

...Court finds that Cook and Fong would be entitled to **qualified immunity**. In addition, because Plaintiffs "fail[ed] to cure deficiencies by...

39. Tapia Carmona v. County of San Mateo

United States District Court, N.D. California. | July 02, 2021 | Slip Copy | 2021 WL 2778539

Plaintiff Oscar Tapia Carmona ("Plaintiff") brought suit against Defendants County of San Mateo, Correctional **Officer** Jesse Ramirez, Correctional **Officer** Walter Daly, Correctional **Officer** Derek Hudnall, Correctional **Officer** James Byrnes, Correctional **Officer** Ryan Cardoza, Correctional **Officer** Berta Garcia, Correctional **Officer** John Ray...

...DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff Oscar Tapia Carmona ("Plaintiff") brought suit against Defendants County of San Mateo, Correctional **Officer** Jesse Ramirez, Correctional **Officer** Walter Daly, Correctional **Officer** Derek Hudnall, Correctional **Officer** James Byrnes, 1 Correctional **Officer** Ryan Cardoza, Correctional **Officer** Berta Garcia, Correctional **Officer**...

...Plaintiff's behavior continued to deteriorate throughout the night. Id. Correctional **Officer** Walter Daly ("Daly") recognized that Plaintiff primarily spoke Spanish, and so Daly asked Correctional **Officer** Jesse Ramirez ("Ramirez"), a bilingual Spanish-English speaker, to speak...

...point in the early morning hours of March 28, 2021, **officers** arrived at Plaintiff's cell and communicated with him in both...

40. Hadden v. Adams

United States District Court, N.D. California. | December 18, 2017 | Not Reported in Fed. Supp. | 2017 WL 6450460

Plaintiff, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983, alleging that defendants were deliberately indifferent to his serious medical needs. Defendants Dr. Gamboa, Dr. M. Danial, Dr. K. Kumar, Chief Medical **Officer** ("CMO") M. Sepulveda, Chief Executive **Officer**...

...MOTION FOR SANCTIONS Re: Dkt. Nos. 34, 45 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California state prisoner proceeding...

...Dr. Gamboa, Dr. M. Danial, Dr. K. Kumar, Chief Medical **Officer** ("CMO") M. Sepulveda, Chief Executive **Officer** ("CEO") G. Ellis, Chief of Inmate Appeals L.D. Zamora, Chief Medical Executive **Officer** ("CMEO") A. Adams, and CEO D. Bright have filed a...

...Sullivan, 3 Dr. M. Danial, Dr. K. Kumar, Chief Medical **Officer** ("CMO") M. Sepulveda, Chief Executive **Officer** ("CEO") G. Ellis, Chief of Inmate Appeals L.D. Zamora, Chief Medical Executive **Officer** ("CMEO") A. Adams, and CEO D. Bright were deliberately indifferent...

41. Washington v. Sandoval

United States District Court, N.D. California. | March 22, 2012 | Not Reported in F.Supp.2d | 2012 WL 987291

Plaintiff, currently incarcerated at Corcoran State Prison and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants Sandoval, Sandquist, and Townsend were deliberately indifferent to his safety, and retaliated against him during his incarceration at Salinas Valley State Prison ("SVSP")....

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , District Judge. Plaintiff, currently incarcerated at Corcoran State Prison and...

...that time, Defendants Sandoval and Sandquist were employed as correctional **officers** at SVSP, and Defendant Townsend was a correctional plumber II...

...alerted staff on the second/watch shift, the unit floor **officers**, and Defendants Sandoval and Sandquist. Id. at 3A:6.) During...

42. Norton v. Hallock

United States District Court, N.D. California. | October 29, 2018 | Not Reported in Fed. Supp. | 2018 WL 5629345

Plaintiff, a California state prisoner proceeding pro se, filed a civil rights action under 42 U.S.C. §1983 alleging that defendant L. Hallock violated plaintiff's First Amendment right to access the courts. Defendant has filed a motion to dismiss and motion for summary judgment. Plaintiff has filed an opposition, and defendant has...

...Defendant. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff, a California state prisoner proceeding...

...entitled to summary judgment on the merits and based on **qualified immunity**. The court agrees that defendant is entitled to summary judgment on the merits and on the basis of **qualified immunity**, and will address both arguments below. MOTION FOR SUMMARY JUDGMENT...

...entitled to summary judgment as a matter of law. III. **Qualified immunity** The defense of **qualified immunity** protects "government officials from liability for civil damages insofar as...

43. Gooden v. Baptista

United States District Court, N.D. California. | August 12, 2014 | Not Reported in Fed. Supp. | 2014 WL 3962644

Plaintiff, a state prisoner proceeding pro se, filed an amended complaint under 42 U.S.C. §1983, arguing that Correctional **Officers** Baptista, Mart, and Garza used excessive force upon him, and Baptista was deliberately indifferent to plaintiff's serious medical needs. Defendants have filed a motion for summary judgment....

...SE PRISONER SETTLEMENT PROGRAM; INSTRUCTIONS TO THE CLERK LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...amended complaint under 42 U.S.C. §1983 , arguing that Correctional **Officers** Baptista, Mart, and Garza used excessive force upon him, and...

...defendants argue that they are entitled to summary judgment and **qualified immunity** on the excessive force claim. 1 Defendants' motion for...

44. Sturgis v. Drollete

United States District Court, N.D. California. | January 24, 2012 | Not Reported in F.Supp.2d | 2012 WL 217820

Plaintiff, a state prisoner, filed an amended pro se prisoner complaint under 42 U.S.C. § 1983, arguing that Defendant Deputies Drollete and Fitzgerald used excessive force upon him, in violation of the Eighth Amendment. On June 23, 2011, Defendants filed a motion for summary judgment. Plaintiff filed an opposition. Defendants filed a reply, and...

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner, filed an amended pro...

...attempting to restore discipline and protect the safety of the **officers**. The following facts are viewed in the light most favorable...

...Plaintiff to come to the door to be handcuffed for **officer** safety. Id. at ¶ 12; Decl. Fitzgerald at ¶ 8...

45. Morris v. Sandoval

United States District Court, N.D. California. | June 11, 2014 | Not Reported in Fed. Supp. | 2014 WL 2738264

Plaintiff, a state prisoner proceeding pro se, filed an amended complaint under 42 U.S.C. §1983, arguing that defendants used excessive force upon him, and were deliberately indifferent to his safety and to his serious medical needs. Defendants have filed a motion for summary judgment. Plaintiff has filed an opposition,...

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...Docket No. 60.) BACKGROUND Plaintiff alleges that: (1) defendant Correctional **Officer** ("C/O") Blair used excessive force against him; (2) defendants...

...defendants argue that they are entitled to summary judgment and **qualified immunity**. The following facts are taken in the light most favorable...

46. Hemsley v. Lunger

United States District Court, N.D. California. | January 24, 2012 | Not Reported in F.Supp.2d | 2012 WL 216471

Plaintiff, a California prisoner proceeding pro se, filed a second amended civil rights action pursuant to 42 U.S.C. § 1983 against Defendant **Officer** Lunger ("Defendant"). Defendant has filed a motion for summary judgment, arguing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. Although given...

...States District Court, N.D. California. John A. HEMSLEY, Plaintiff, v. **Officer** LUNGER, Defendant. No. C 09–6002 LHK (PR). Jan. 24...

...Defendant. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a California prisoner proceeding pro se, filed...

...rights action pursuant to 42 U.S.C. § 1983 against Defendant **Officer** Lunger ("Defendant"). Defendant has filed a motion for summary judgment...

47. Parrish v. Solis

United States District Court, N.D. California. | August 28, 2012 | Not Reported in F.Supp.2d | 2012 WL 3902689

Plaintiff, a state prisoner proceeding pro se, filed a complaint under 42 U.S.C. § 1983, arguing that Defendants used excessive force upon him, in violation of the Eighth Amendment. On December 5, 2011, Defendants filed a motion for summary judgment. Plaintiff has filed an opposition, and Defendants have filed a reply. Having carefully considered...

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...Plaintiff from committing suicide, and because they are entitled to **qualified immunity** The following facts are taken in the light most favorable...

...shield, and placed Plaintiff in handcuffs. Id. at 9.) Another **officer** placed handcuffs on Plaintiff's ankles while Plaintiff was lying on...

48. Saif'ullah v. Albritton

United States District Court, N.D. California, San Jose Division. | June 30, 2017 | Not Reported in Fed. Supp. | 2017 WL 2834119

Plaintiffs Khalifah El-Amin Din Saif'ullah, Enver Karafili, Montshu Abdullah, Amir Shabazz, Abdullah Saddiq, Mujahid Ta'lib Din, Andre Lamont Batten, Hatim Fardan, Abdul Aziz, Anthony Bernard Smith, Jr., and Damian Mitchell are California state prisoners proceeding pro se. Each plaintiff filed a civil rights complaint under 42 U.S.C....

...FORMA PAUPERIS STATUS; GRANTING MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiffs Khalifah El-Amin Din Saif'ullah...

...2016, defendants moved for judgment on the pleadings based on **qualified immunity** in all eleven cases; to revoke the in forma pauperis...

...Rule of Civil Procedure 12(c) on the basis of **qualified immunity** in all eleven cases. Defendants argue that, taking the factual allegations of the complaints as true, no reasonable **officer** would believe that enforcement of the June 3, 2014 order...

49. Chaparro v. Ducart

United States District Court, N.D. California. | February 09, 2016 | Not Reported in Fed. Supp. | 2016 WL 491635

Plaintiff, a California state prisoner proceeding pro se, filed a civil rights complaint against prison officials at Pelican Bay State Prison ("PBSP"), pursuant to 42 U.S.C. § 1983. Plaintiff claims that defendants violated his right to free exercise of his religion. Defendants have moved for summary judgment on the merits, and on...

...Adrian Armando CHAPARRO , Plaintiff, v. Warden C.E. DUCART and Correctional **Officer** E. Contreras, Defendants. No. C 14-4955 LHK (PR) Docket...

...Defendant. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff, a California state prisoner proceeding...

...summary judgment on the merits, and on the basis of **qualified immunity**. 1 Plaintiff has filed an opposition, 2 and defendants have...

50. Quiroz v. Short

United States District Court, N.D. California. | March 26, 2015 | Not Reported in Fed. Supp. | 2015 WL 1395786

Plaintiff, a state prisoner proceeding pro se, filed a third amended complaint under 42 U.S.C. §1983, arguing that prison official defendants violated his federal and state law rights. Defendant Sgt. D. Short has filed a motion for summary judgment. Plaintiff has filed an opposition, and defendant has filed a reply....

...REFERRING CASE TO SETTLEMENT PROCEEDINGS (Docket No. 246.) LUCY H. **KOH** , District Judge Plaintiff, a state prisoner proceeding pro se, filed...

...defendant argues that he is entitled to summary judgment and **qualified immunity**. The following facts are taken in the light most favorable...

...¶58.) The lawsuit alleged that the IGI and other **officers** used excessive force against Sandoval. Id. ¶38.) On January...

51. Treglia v. Cate

United States District Court, N.D. California. | August 28, 2012 | Not Reported in F.Supp.2d | 2012 WL 3731774

Plaintiff, a state prisoner proceeding pro se, filed a complaint under 42 U.S.C. § 1983, arguing that Defendants violated his First and Fourth Amendments, as well as state law. On February 17, 2012, Defendants filed a motion for summary judgment. Plaintiff has filed an opposition, along with supporting documents, and Defendants have filed a reply....

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...claim. Alternatively, Defendants are entitled to summary judgment based on **qualified immunity**. The defense of **qualified immunity** protects government officials "from liability for civil damages insofar as...

...396 (1982) To determine whether an official is entitled to **qualified immunity**, the Court must decide whether the facts alleged show the...

52. Quiroz v. Horel

United States District Court, N.D. California. | March 31, 2015 | 85 F.Supp.3d 1115 | 2015 WL 1485024

CIVIL RIGHTS — Prisons. Prison officials did not have retaliatory motive in stopping incoming letter to prisoner from his niece that was allegedly gang-related.

Synopsis
Background: State prisoner, proceeding pro se, brought action against prison officials, alleging, inter alia, that officials retaliated against prisoner for filing prior federal civil rights complaint and for participating in another inmate's civil rights suit. Officials moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 officials did not have retaliatory motive in stopping incoming letter to prisoner from his girlfriend's cousin;
2 officials did not have retaliatory motive in stopping incoming letter to prisoner from his niece;
3 officials did not have retaliatory motive in stopping prisoner's outgoing letter to his friend;
4 officials did not have retaliatory motive in stopping prisoner's mail containing legal discovery documents;
5 officials' act of delaying prisoner's mail did not harm prisoner;
6 genuine issue of material fact existed as to whether official had retaliatory motive for issuing Rules Violation Report (RVR) against prisoner;
7 genuine issue of material fact existed as to whether officials had retaliatory motive when they searched prisoner's cell; and
8 genuine issue of material fact existed as to whether prison officials had agreement to retaliate against prisoner.
Motion granted in part and denied in part.

...moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) officials did not have retaliatory motive...

...Courts and Public Officials 310 264 k. Communication with courts, **officers**, or counsel. 310 Prisons 310II Prisoners and Inmates 310II(H...

...Good Faith and Probable Cause 78 1376 Government Agencies and **Officers** 78 1376(2) k. Good faith and reasonableness; knowledge and...

53. York v. Hernandez

United States District Court, N.D. California. | July 05, 2011 | Not Reported in F.Supp.2d | 2011 WL 2650243

Plaintiff, a California prisoner proceeding pro se, filed an amended civil rights action pursuant to 42 U.S.C. § 1983 against Defendant J. Hernandez. Defendant has filed his motion for summary judgment on November 24, 2010, arguing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. Plaintiff has...

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , District Judge. Plaintiff, a California prisoner proceeding pro se, filed...

...on February 16, 2005, Defendant returned to Plaintiff's cell with **Officer** Rodriguez. (Def. Decl. at ¶ 7; Rodriguez Decl. at ¶...

...6.) Defendant was concerned at Plaintiff's violence and anger, and **Officer** Rodriguez immediately summoned other **officers**. (Def. Decl at ¶ 12; Rodriguez Decl. at ¶ 6...

54. Rickleffs v. Terry

United States District Court, N.D. California. | July 19, 2018 | Not Reported in Fed. Supp. | 2018 WL 3496320

Plaintiff, a California state pretrial detainee proceeding pro se, has filed a civil rights complaint, pursuant to 42 U.S.C. §1983. In the complaint, plaintiff alleges that defendant Lieutenant Terry violated plaintiff's right to due process. Defendant has filed a motion for summary judgment. Plaintiff has filed an opposition, and...

...INSTRUCTIONS TO CLERK Re: Dkt. Nos. 12, 13 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California state pretrial detainee...

...moves for summary judgment on the merits and based on **qualified immunity**. In the alternative, defendant argues that plaintiff's requests for emotional...

...was intended for 60 days, but one of the other **officers** "corrected" the situation and moved plaintiff back to Pod 3B...

55. Abbott v. Tootell

United States District Court, N.D. California. | November 13, 2012 | Not Reported in F.Supp.2d | 2012 WL 5497999

Plaintiff, a state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983 challenging the conditions of his confinement at San Quentin State Prison. Defendants have filed a motion to dismiss for failure to state a claim, and also for failing to exhaust in part. Plaintiff has filed an opposition, and...

...Defendants. ORDER DENYING MOTIONS TO DISMISS; FURTHER BRIEFING LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...Court also rejects Defendants' argument that they are entitled to **qualified immunity**. The **qualified immunity** inquiry is separate from the constitutional inquiry for a claim...

...were deliberately indifferent does not necessarily preclude a finding of **qualified immunity**. Id. For a **qualified immunity** analysis, the Court need not determine whether the facts alleged...

56. Johnson v. San Benito County

United States District Court, N.D. California, San Jose Division. | December 03, 2013 | Not Reported in Fed. Supp. | 2013 WL 6248274

Plaintiff Brett Johnson ("Plaintiff") brings this action against Defendants San Benito County, Patrick Turturici, and Tony Lamonica ("Defendants") for alleged violations of 42 U.S.C. §1983. Before the Court are Defendants' Motions for Summary Judgment, which are fully briefed. After considering the...

...Defendants. ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff Brett Johnson ("Plaintiff") brings this...

...moving party). Plaintiff Brett Johnson is a San Jose police **officer** and a father of four. ECF No. 50–1 ("Johnson...

...U.S.C. §1983 against two San Benito County Sheriff's Department **Officers**, Undersheriff Patrick Turturici and Sergeant Tony Lamonica (collectively, " **Officer** Defendants"), along with the County of San

Benito. ECF No. 1. Plaintiff alleges that **Officer** Defendants engaged in a conspiracy that resulted in the deprivation...

57. Smith v. Cruzen

United States District Court, N.D. California, San Jose Division. | October 26, 2017 | Not Reported in Fed. Supp. | 2017 WL 4865565

Plaintiff Anthony Bernard Smith, a California state prisoner proceeding pro se, filed an amended civil rights complaint under 42 U.S.C. §1983. On February 21, 2017, defendants filed a motion for summary judgment. Plaintiff has filed an opposition, and defendants have filed a reply. For the reasons stated below, defendants' motion is...

...FOR SUMMARY JUDGMENT Re: Dkt. Nos. 64, 80 LUCY H. **KOH** , United States District Judge Plaintiff Anthony Bernard Smith, a California...

...On July 25, 2014, defendants Correctional Sergeant Jimmy Cruzen, Correctional **Officer** C. Caldera, Correctional **Officer** R. Christensen, and Correctional **Officer** David Ogle interrupted the prayer and surrounded the Muslim prisoners...

...in the alternative, defendants argue that they are entitled to **qualified immunity**. The court addresses each argument in turn. A. Substantial burden...

58. Navarro v. Sterkel

United States District Court, N.D. California, San Jose Division. | August 07, 2012 | Not Reported in F.Supp.2d | 2012 WL 3249487

Plaintiff Jon Derrick Navarro ("Plaintiff" or "Navarro") brings this action seeking damages against **Officers** Bryan Sterkel, Chris Bell, Mike Garcia, and Chris Pilger of the Santa Clara Police Department, and the City of Santa Clara ("Defendants") pursuant to 42 U.S.C. § 1983. Plaintiff alleges that he was...

...N.D. California, San Jose Division. Jon Derrick NAVARRO , Plaintiff, v. **Officers** Bryan STERKEL, Chris Bell, Mike Garcia , and chris pilger Santa...

...ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff Jon Derrick Navarro ("Plaintiff" or "Navarro") brings this action seeking damages against **Officers** Bryan Sterkel, Chris Bell, Mike Garcia, and Chris Pilger of...

...judgment. I. BACKGROUND On the night of April 7, 2009, **Officer** Sterkel was contacted by dispatch and advised that an armed...

59. Milliken v. Sturdevant

United States District Court, N.D. California, San Jose Division. | May 15, 2020 | Slip Copy | 2020 WL 2512381

Plaintiff is a California prisoner incarcerated at California State Prison, Sacramento ("CSP-Sac"). Plaintiff was previously incarcerated at Pelican Bay State Prison ("PBSP") and California State Prison, Corcoran ("CSP-Cor"). See Dkt. No. 1. Pursuant to 42 U.S.C. § 1983, plaintiff filed a pro se civil rights...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 45 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff is a California prisoner incarcerated...

...all PSBP employees, were responsible for these alleged wrongs: Correctional **Officers** C. Sturdevant (" **Officer** Sturdevant") and D. Bradbury (" **Officer** Bradbury"); Sergeants M.K. Anderson ("Sergeant Anderson") and J. Schrag ("Sergeant...

...Investigators"); Classification Staff Representative D. Garcia ("Representative Garcia"); Senior Hearing **Officer** Captain D. Wilcox ("Captain Wilcox"); and Chief Deputy Warden R.K...

60. Andrews v. Aurelio

United States District Court, N.D. California. | February 01, 2013 | Not Reported in F.Supp.2d | 2013 WL 431034

Plaintiff, a California prisoner proceeding pro se, filed a second amended civil rights complaint ("SAC") pursuant to 42 U.S.C. § 1983 against prison officials. Plaintiff claims that Defendants violated his right to due process. Defendants have moved to dismiss for failure to exhaust and untimeliness and moved for summary judgment. Plaintiff has...

...DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a California prisoner proceeding pro se, filed...

...at PBSP, and contends that Aurelio conspired with Defendants Correctional **Officer** Oritz ("Ortiz") and Classification Staff Representative Carriedo ("Carriedo") to increase...

...to the underlying claim, and because they are entitled to **qualified immunity**. The remaining Defendants are Aurelio, Melton, and Walch. Summary judgment...

61. Sevey v. Soliz

United States District Court, N.D. California. | April 27, 2012 | Not Reported in F.Supp.2d | 2012 WL 1497515

Plaintiff, a state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that employees of the Lake County Sheriff's Department violated his constitutional rights. On July 5, 2011, the Court granted in part and denied in part Defendants' motion to dismiss for failure to state a claim, and ordered...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...of law. Alternatively, Defendants argue that they are entitled to **qualified immunity**. The defense of **qualified immunity** protects "government officials from liability for civil damages insofar as...

...L.Ed.2d 396 (1982) A court considering a claim of **qualified immunity** must determine: (1) whether the plaintiff has alleged the deprivation...

62. Carter v. Foulk

United States District Court, N.D. California. | September 11, 2012 | Not Reported in F.Supp.2d | 2012 WL 3987603

Plaintiff, a civilly committed patient proceeding pro se, filed an amended civil rights complaint ("AC") pursuant to 42 U.S.C. § 1983 against officials at Napa State Hospital ("NSH"). In his AC, Plaintiff alleges that Defendants violated his right to due process under the Fourteenth Amendment. Defendants have moved for summary judgment. Plaintiff...

...se. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a civilly committed patient proceeding pro se...

...a matter of law, and that they are entitled to **qualified immunity**. The defense of **qualified immunity** protects "government officials from liability for civil damages insofar as...

...L.Ed.2d 396 (1982) A Court considering a claim of **qualified immunity** must determine: (1) whether the Plaintiff has alleged the deprivation...

63. Peasley v. Spearman

United States District Court, N.D. California, San Jose Division. | September 18, 2018 | Not Reported in Fed. Supp. | 2018 WL 4468823

Plaintiff David Scott Peasley ("plaintiff"), a California prisoner, has filed an amended civil rights complaint pursuant to 42 U.S.C. §1983. In the amended complaint, plaintiff alleges that defendants—all of whom were medical and correctional personnel at plaintiff's former prison, the Correctional Training Facility...

...THE PLEADINGS Re: Dkt. Nos. 238, 239, 242 LUCY H. **KOH** , United States District Judge Plaintiff David Scott Peasley ("plaintiff"), a...

...pleadings. Count 4 against Dr. Ahmed and Count 8 against **Officer** Lopez survive defendants' motion for summary judgment. I.BACKGROUND A...

...ECF No. 238-4 ¶2; Ellis, the Chief Executive **Officer** for Health Services at CTF, ECF No. 238-6 ¶...

64. Rice v. Ramsey

United States District Court, N.D. California. | September 19, 2012 | Not Reported in F.Supp.2d | 2012 WL 4177438

Plaintiff Steven Rice, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at the Correctional Training Facility ("CTF"). Plaintiff alleged violations of his First Amendment free exercise rights, his Fourteenth Amendment equal protection rights, and the Religious Land Use and Institutionalized...

...United States District Court, N.D. California. Steven RICE, Plaintiff, v. **Officer** J. RAMSEY, et al., Defendants. No. C 09–1496 LHK...

...MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff Steven Rice, proceeding pro se, filed a...

...a matter of law, and that they are entitled to **qualified immunity**. Plaintiff has filed an opposition to the motion, and Defendants...

65. Larson v. Creamer–Todd

United States District Court, N.D. California. | February 25, 2014 | Not Reported in Fed. Supp. | 2014 WL 721953

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. §1983 alleging that prison officials at Central Training Facility in Soledad retaliated against him, in violation of the First Amendment. Defendants have moved for summary judgment. Although given an opportunity, plaintiff...

...CASE TO SETTLEMENT PROCEEDINGS (Docket No. 36, 50) LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...retaliation claim. Alternatively, defendants argue that they are entitled to **qualified immunity**. "Within the prison context, a viable claim of First Amendment...

...the merits. Alternatively, defendants argue that they are entitled to **qualified immunity**. Specifically, defendants argue that the law was not clear regarding...

66. Saif'ullah v. Cruzen

United States District Court, N.D. California. | October 26, 2017 | Not Reported in Fed. Supp. | 2017 WL 4865601

Plaintiff Khalifah E.D. Saif'ullah, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983. On May 9, 2017, defendants filed a motion for summary judgment. Plaintiff has filed an opposition, and defendants have filed a reply. For the reasons stated below, defendants' motion is granted. The...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 44 LUCY H. **KOH** , United States District Judge Plaintiff Khalifah E.D. Saif'ullah, a California...

...On July 25, 2014, defendants Correctional Sergeant Jimmy Cruzen, Correctional **Officer** C. Caldera, Correctional **Officer** R. Christensen, and Correctional **Officer** David Ogle interrupted the congregational prayer and surrounded the Muslim...

...in the alternative, defendants argue that they are entitled to **qualified immunity**. The court addresses each argument in turn. A. Substantial burden...

67. Rice v. Curry

United States District Court, N.D. California. | October 12, 2012 | Not Reported in F.Supp.2d | 2012 WL 4902829

Plaintiff Steven Rice, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at the Correctional Training Facility ("CTF"). Plaintiff alleged violations of his First Amendment free exercise rights, his Fourteenth Amendment equal protection rights, and the Religious Land Use and Institutionalized...

...MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff 1 Steven Rice, proceeding pro se, filed...

...a matter of law, and that they are entitled to **qualified immunity**. Plaintiff has filed an opposition to the motion, and Defendants...

...them the right to file appeals alleging misconduct by correctional **officers**/officials. Id. § 3084.1(e) In order to exhaust...

68. Wright v. City of Santa Cruz

United States District Court, N.D. California, San Jose Division. | January 17, 2014 | Not Reported in Fed. Supp. | 2014 WL 217089

Before the Court is Defendant City of Santa Cruz's ("City") Motion to Dismiss Plaintiffs' First Amended Complaint and Motion for a More Definite Statement. ECF No. 19. Defendant County of Santa Cruz ("County") joins the City's Motion in part. ECF No. 20. Plaintiffs Haley Wright ("Haley...

...DISMISS AND MOTION FOR A MORE DEFINITE STATEMENT LUCY H. **KOH** , United States District Judge Before the Court is Defendant City...

...94 Moreover, both cases involved the question of whether individual **officers** may be held liable as a group in the absence...

...states that "[m]uch like the immunity afforded to law enforcement **officers** under state law for effecting an arrest pursuant to a...

69. Roe v. San Jose Unified School District Board

United States District Court, N.D. California. | January 28, 2021 | Slip Copy | 2021 WL 292035

The Fellowship of Christian Athletes ("FCA") and two of its pseudonymous former student members (collectively, "Plaintiffs") allege that the San Jose Unified School District and its officials (collectively, "Defendants") discriminated against FCA's religious viewpoint and unlawfully derecognized FCA's student...

...PART MOTION TO DISMISS Re: Dkt. No. 25 LUCY H. **KOH** , United States District Judge The Fellowship of Christian Athletes ("FCA...

...drug, alcohol and tobacco-free life? ____ Yes ____ No As an **officer**, I will be accountable to the other **officers**, Huddle Coach(es) and FCA staff. I understand that if...

...law—and that regardless, the individual Defendants are entitled to **qualified immunity**. Lastly, Defendants argue that the Coverdell Teacher Protection Act, 20...

70. Patten v. Stone

United States District Court, N.D. California. | October 05, 2012 | Not Reported in F.Supp.2d | 2012 WL 4761908

Plaintiff, a state prisoner proceeding pro se, filed a second amended civil rights complaint ("SAC") pursuant to 42 U.S.C. § 1983 challenging the conditions of his confinement at San Quentin State Prison ("SQSP"). For the reasons stated below, the Court orders the SAC served upon named Defendants. A federal court must conduct a preliminary...

...REGARDING SUCH MOTION; DENYING MOTION TO APPOINT COUNSEL LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...broke while eating. Id. at 4.) Plaintiff informed Defendant Correctional **Officer** R. Upshaw and requested treatment. Id. Upshaw responded with laughter...

71. Saif'ullah v. Albritton

United States District Court, N.D. California, San Jose Division. | December 21, 2017 | Not Reported in Fed. Supp. | 2017 WL 6558719

Plaintiff Khalifah E.D. Saif'ullah, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983. On August 29, 2017, defendants Associate Warden S.R. Albritton ("Albritton") and Correctional Lieutenant R. Kluger ("Kluger") filed a motion for summary judgment. Plaintiff has...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 51 LUCY H. **KOH** , United States District Judge Plaintiff Khalifah E.D. Saif'ullah, a California...

...housing units can be intimidating to other inmates, can overwhelm **officers** in the event of an emergency, and can block access...

...2014, Kluger received a phone call from a third shift **officer** performing a cell search on the third tier at West Block. Kluger Decl. ¶5. The **officer** reported to Kluger that the **officer** could hear the Muslim evening prayer from the third tier...

72. Sunnergren v. Tootell

United States District Court, N.D. California. | January 22, 2014 | Not Reported in Fed. Supp. | 2014 WL 261530

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. §1983 alleging that several San Quentin State Prison ("SQSP") officials were deliberately indifferent to his serious medical needs. Defendants have moved for summary judgment. Plaintiff has filed an opposition,...

...CASE TO SETTLEMENT PROCEEDINGS (Docket Nos. 30, 38) LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...Ex. L; Wu Decl. at ¶6.) Defendant Chief Medical **Officer** Tootell ("CMO Tootell") denied plaintiff's appeal complaining of Dr. Wu's...

...to address defendants' argument that Dr. Wu is entitled to **qualified immunity**. 2. Dr. Espinoza Plaintiff claims that Dr. Espinoza was deliberately...

73. Parrish v. Solis

United States District Court, N.D. California, San Jose Division. | November 11, 2014 | Not Reported in Fed. Supp. | 2014 WL 5866935

Plaintiff Kaheal Parrish ("Parrish") brings this action under 42 U.S.C. §1983 and §1985(5) against defendants Gregorio Salazar, Raul Machuca, Jr., Brandon Powell, Adrian Machuca, Jason Sanudo (the "Extraction Defendants") and Maurice Haldeman (collectively, "Defendants"). All...

...DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff Kaheal Parrish ("Parrish") brings this...

...Defendants") and Maurice Haldeman (collectively, "Defendants"). All Defendants are correctional **officers** at Salinas Valley State Prison. Parrish has alleged violations of...

...Id . At some point, Raul Machuca and five other correction **officers** entered Parrish's cell to conduct a cell extraction. Id It...

74. Brown v. Tubbs

United States District Court, N.D. California, San Jose Division. | March 20, 2019 | Not Reported in Fed. Supp. | 2019 WL 1284504

Plaintiff is a California state prisoner incarcerated at Pelican Bay State Prison ("PBSP"). Plaintiff, proceeding pro se, has filed an amended civil rights complaint under 42 U.S.C. §1983. Plaintiff named as defendants PBSP correctional **officers** B. Tubbs, C. Case, C. Hamilton, M. Douglas, A. Escobar, A. Deere, and M....

...MOTION IS UNWARRANTED Re: Dkt. Nos. 1, 2 LUCY H. **KOH** , United States District Judge Plaintiff is a California state prisoner...

...42 U.S.C. §1983 Plaintiff named as defendants PBSP correctional **officers** B. Tubbs, C. Case, C. Hamilton, M. Douglas, A. Escobar, A. Deere, and M. Stouffer ("Correctional **Officers** "); PBSP sergeant B. Chaucer ("Sergeant Chaucer"); PBSP warden J. Robertson...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

75. Tatum v. Puget

United States District Court, N.D. California. | March 08, 2012 | Not Reported in F.Supp.2d | 2012 WL 762084

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against various Pelican Bay State Prison ("PBSP") officials, including Defendants T. Puget, D. Bradbury, R. Cox, and D. Rothchild. Plaintiff maintains Defendants denied him due process by placing him in administrative segregation without the...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...Plaintiff's due process rights, and that they are entitled to **qualified immunity**. See Docket no. 49. Plaintiff filed his opposition. Defendants filed...

...Johnson. (Compl. at 6; Marvin Decl. ¶ 7(c).) An **officer** who arrived at the scene observed Johnson with "cuts and...

76. Abbott v. Tootell

United States District Court, N.D. California. | February 25, 2014 | Not Reported in Fed. Supp. | 2014 WL 726561

Plaintiff, proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. §1983 against prison officials at San Quentin State Prison ("SQSP"). Plaintiff alleges that defendants Chief Medical **Officer** ("CMO") Dr. Tootell, Dr. Grant, Dr. Jones, Lieutenant Arnold, and Sergeant Seman...

...SETTLEMENT PROCEEDINGS (Docket Nos. 88, 103, 105, 122) LUCY H. **KOH** , United States District Judge Plaintiff, proceeding pro se, filed an...

...Quentin State Prison ("SQSP"). Plaintiff alleges that defendants Chief Medical **Officer** ("CMO") 1 Dr. Tootell, Dr. Grant, Dr. Jones, Lieutenant Arnold...

...indifference). Alternatively, defendants argue that Dr. Grant is entitled to **qualified immunity**. The defense of **qualified immunity** protects "government officials from liability for civil damages insofar as...

77. Patkins v. Koenig

United States District Court, N.D. California, San Jose Division. | April 23, 2021 | Slip Copy | 2021 WL 1599319

Plaintiff David Patkins ("Plaintiff"), who is incarcerated at the Correctional Training Facility ("CTF") in Soledad, California, sues A. Lisk ("Lisk"), who was a correctional **officer** at CTF, and Craig Koenig ("Koenig"), who is the warden of CTF (collectively, "Defendants"). Before the...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 68 LUCY H. **KOH** , United States District Judge Plaintiff David Patkins ("Plaintiff"), who is...

...Soledad, California, sues A. Lisk ("Lisk"), who was a correctional **officer** at CTF, and Craig Koenig ("Koenig"), who is the warden...

...7, 10; Kela Decl. ("I, Aprim Kela also witnessed corrections **officer** A. Lisk confiscate the lunch of inmate David C. Patkins...

78. Gonzalez v. Ahmed

United States District Court, N.D. California. | September 11, 2012 | Not Reported in F.Supp.2d | 2012 WL 3987583

Plaintiff, a state prisoner proceeding pro se, filed an amended complaint ("AC") under 42 U.S.C. § 1983, arguing that Defendants retaliated against him, and were deliberately indifferent to his serious medical needs, in violation of the First and Eighth Amendments. On November 14, 2011, Defendants filed a motion for summary judgment. Plaintiff has...

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...their actions were reasonable, and because they are entitled to **qualified immunity**. The following facts are taken in the light most favorable...

...¶ 2.) Defendant Dr. Chudy ("Dr.Chudy") was the Chief Medical **Officer** at CTF. (AC at 7.) 2 The page numbers...

79. Cole v. Cate

United States District Court, N.D. California. | January 24, 2012 | Not Reported in F.Supp.2d | 2012 WL 243327

Plaintiff, proceeding pro se, filed an amended civil rights complaint ("AC") pursuant to 42 U.S.C. § 1983 against prison officials at Pelican Bay State Prison ("PBSP"). Plaintiff alleges that Defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Plaintiff also raises several related state law...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, proceeding pro se, filed an amended civil...

...sues Dr. Sayre in his supervisorial capacity as Chief Medical **Officer** of PBSP. Specifically, Plaintiff alleges that Dr. Sayre was aware...

...will be granted in favor of each such Defendant. B. **Qualified Immunity** Defendants claim, in the alternative, that **qualified immunity** would protect them from liability on Plaintiff's deliberate indifference claim. The defense of **qualified immunity** protects "government officials from liability for civil damages insofar as...

80. Ryan v. Fabela

United States District Court, N.D. California, San Jose Division. | February 02, 2018 | Slip Copy | 2018 WL 10196531

Plaintiff Joseph Ryan ("Plaintiff") brought this action against Defendant Santa Clara Valley Transportation Authority ("SCVTA"), Defendant Robert Fabela, in his individual and official capacities, and Defendant Nuria Fernandez, in her individual and official capacities. All claims against SCVTA and Fernandez have been...

...SUMMARY JUDGMENT Re: Dkt. Nos. 72, 76, 77 LUCY H. **KOH** , United States District Judge Plaintiff Joseph Ryan ("Plaintiff") brought this...

...legal services to SCVTA's Administrative Services department, including Chief Administrative **Officer** Bill Lopez, Deputy Director Robert Escobar, and Labor Relations Manager...

...even if Plaintiff's rights were violated, Defendant is entitled to **qualified immunity** because Plaintiff's rights were not clearly established. The Court finds...

81. York. v. Hernandez

United States District Court, N.D. California. | February 25, 2011 | Not Reported in F.Supp.2d | 2011 WL 768794

Plaintiff, a state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that employees of Salinas Valley State Prison ("SVSP") violated his constitutional rights. After screening the amended complaint, the Court dismissed one defendant, and ordered that the amended complaint be served on...

...FOR CONTINUANCE; GRANTING DEFENDANT'S MOTION TO STAY DISCOVERY LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...ordered that the amended complaint be served on Defendant Correctional **Officer** J. Hernandez. On November 24, 2010, Defendant filed a motion...

...construed Plaintiff's opposition to Defendant's motion to stay and for **qualified immunity** (docket no. 26) as Plaintiff's opposition to Defendant's motion for...

82. Wilkes v. Magnus

United States District Court, N.D. California. | October 11, 2012 | Not Reported in F.Supp.2d | 2012 WL 4857816

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights action under 42 U.S.C. § 1983. For the reasons stated below, the Court dismisses the amended complaint in part, and orders service. According to the amended complaint, on August 21, 2011, Richmond Police **Officer** Brown detained Plaintiff and began kicking and...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner proceeding pro se...

...to the amended complaint, on August 21, 2011, Richmond Police **Officer** Brown detained Plaintiff and began kicking and beating him. Richmond Police **Officer** K. Tong joined **Officer** Brown, and began using his taser on Plaintiff even though...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

83. Collier v. Garcia

United States District Court, N.D. California. | January 31, 2018 | Not Reported in Fed. Supp. | 2018 WL 659014

Plaintiff, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the court dismisses the complaint for failure to state a claim. A federal court must conduct a preliminary screening in...

...Collier, Calipatria, CA, pro se. ORDER OF DISMISSAL LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California state prisoner proceeding...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...alleges that Sergeants P. Garcia and G. Ramey and Correctional **Officer** W. Fox were deliberately indifferent to plaintiff's safety. Plaintiff...

84. Nungaray v. Rowe

United States District Court, N.D. California. | August 30, 2011 | Not Reported in F.Supp.2d | 2011 WL 3862093

Plaintiff Mario Alexander Nungaray, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Doctors Rowe and Adams at Pelican Bay State Prison ("PBSP"). Defendants have moved for summary judgment. Plaintiff has opposed Defendants' motion, and Defendants have filed a reply. Having carefully considered the papers...

...Defendants. ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff Mario Alexander Nungaray, proceeding pro se, filed...

...Amendment, the Court next addresses whether he is entitled to **qualified immunity**. A court considering a claim of **qualified immunity** must determine whether the plaintiff has alleged the deprivation of...

...established such that it would be clear to a reasonable **officer** that his conduct was unlawful in the situation he confronted...

85. Treglia v. Kernan

United States District Court, N.D. California. | September 07, 2012 | Not Reported in F.Supp.2d | 2012 WL 3909219

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights action under 42 U.S.C. § 1983, against prison officials. Plaintiff has been granted leave to proceed in forma pauperis in

a separate order. For the reasons stated below, the Court will serve the amended complaint. A federal court must conduct a preliminary...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner proceeding pro se...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...right to free speech. The following day, Defendant Lewis ordered **officers** to distribute a memo, authored by Defendant Scott Kernan, that...

86. Briones v. California

United States District Court, N.D. California. | November 08, 2010 | Not Reported in F.Supp.2d | 2010 WL 4860676

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 raising violations of her constitutional rights while incarcerated at Salinas Valley State Prison ("SVSP"). Plaintiff is granted leave to proceed in forma pauperis in a separate order. A federal court must conduct a preliminary screening in...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...housed only male inmates. At an unspecified date, Defendant Correctional **Officer** Rocha moved Plaintiff into Building 4, the building in which he was the second watch floor **officer**. Plaintiff alleges that Rocha asked Plaintiff to expose her breasts...

87. Wilkes v. Magnus

United States District Court, N.D. California. | June 25, 2012 | Not Reported in F.Supp.2d | 2012 WL 2395663

Plaintiff, a California state prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court dismisses the complaint in part, and orders service. According to the complaint, on August 21, 2011, Richmond...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner proceeding pro se...

...According to the complaint, on August 21, 2011, Richmond Police **Officer** Brown detained Plaintiff for "no good reason" and began kicking and beating him. Richmond Police **Officer** K. Tong joined **Officer** Brown, and began using his taser on Plaintiff while Plaintiff...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

88. Frost v. Hallock

United States District Court, N.D. California, San Jose Division. | March 08, 2019 | Not Reported in Fed. Supp. | 2019 WL 1102379

Plaintiff Shawn Frost ("plaintiff") is a California prisoner housed at Pelican Bay State Prison ("PBSP"). Plaintiff filed a pro se civil rights complaint, pursuant to 42 U.S.C. §1983. He sued J. Hallock, a sergeant at PBSP ("Sergeant Hallock"); J. Hunt, correctional lieutenant at PBSP...

...TO STRIKE Re: Dkt. Nos. 35, 49, 57 LUCY H. **KOH** , United States District Judge Plaintiff Shawn Frost ("plaintiff") is a...

...Warden Ducart"); and D.W. Bradbury, correctional administrator and chief disciplinary **officer** ("CDO") at PBSP ("CDO Bradbury") (collectively, "defendants"). Plaintiff alleged defendants...

...Decl., Ex. A ("OP 228") at 1. OP 228 instructed **officers** to "[e]nsure disciplinary action is taken against participating inmates in...

89. Furnace v. Giurbino

United States District Court, N.D. California. | November 22, 2013 | Not Reported in Fed. Supp. | 2013 WL 6157954

Plaintiff, a state prisoner proceeding pro se, filed a second amended civil rights complaint ("SAC") against prison officials pursuant to 42 U.S.C. §1983. In his SAC, plaintiff alleges that defendants violated his right to due process, the Equal Protection Clause, plaintiff's First Amendment right to publications, and...

...for Defendants. ORDER GRANTING DEFENDANTS' MOTION TO DISMISS LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...judicata and collateral estoppel, failure to state a claim, and **qualified immunity**. Plaintiff has filed an opposition, and defendants have filed a...

...additional arguments of a failure to state a claim or **qualified immunity**. Under the Federal Full Faith and Credit Statute, 28 U.S.C...

90. Adams v. Kraft

United States District Court, N.D. California, San Jose Division. | July 29, 2011 | Not Reported in F.Supp.2d | 2011 WL 3240598

Plaintiff Berry Lynn Adams filed his Second Amended Complaint (Dkt. No. 110–11, "SAC") on April 7, 2011. Defendants Daniel L. Kraft ("Kraft"), Phillip Hauck ("Hauck"), Kirk Lingenfelter ("Lingenfelter"), K.P. Best ("Best"), J.I. Stone ("Stone"), Chip Bockman ("Bockman"), R. Callison ("Callison"), and Scott Sipes ("Sipes") (collectively...

...AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS LUCY H. **KOH** , District Judge. Plaintiff Berry Lynn Adams filed his Second Amended...

...to dismiss the SAC, aside from certain claims against certain **officers** as explained below. See Dkt. No. 116. Plaintiff filed a...

...claimed Plaintiff was lodging baseless complaints about State Park Peace **Officers** and consuming the **officers**' time, and that Plaintiff was causing disturbances, which Lingenfelter believed...

91. Perry v. McFarland

United States District Court, N.D. California. | January 21, 2011 | Not Reported in F.Supp.2d | 2011 WL 227651

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 seeking damages for alleged civil rights violations. On October 7, 2010, the Court dismissed Plaintiff's complaint with leave to amend to cure several deficiencies. On November 1, 2010, Plaintiff file the instant amended complaint. For the...

...Court, N.D. California. Gregory PERRY, Plaintiff, v. C. McFARLAND, Correctional **Officer**, Defendant. No. C 10–2882 LHK (PR). Jan. 21, 2011...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

92. Jones v. Grounds

United States District Court, N.D. California. | October 05, 2012 | Not Reported in F.Supp.2d | 2012 WL 4761910

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint against prison officials at Correctional Training Facility—North ("CTF—North"), pursuant to 42 U.S.C. § 1983. For the reasons stated below, the Court dismisses two Defendants, and orders service upon the remaining two Defendants. A federal court must conduct a preliminary...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...2012, Plaintiff was waiting on the first tier while Correctional **Officers** R. Roque and S.A. Handley searched Plaintiff's cell, located on...

93. Rickleffs v. Senior Deputy Ward

United States District Court, N.D. California. | September 21, 2015 | Not Reported in Fed. Supp. | 2015 WL 5609995

Plaintiff, a California state pretrial detainee proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. §1983. For the reasons stated below, the court directs the clerk to send a waiver of service to defendant, and directs defendant to file a dispositive motion or notice regarding such motion. A federal court...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** United States District Judge Plaintiff, a California state pretrial detainee...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If defendant is...

94. York v. Hernandez
United States District Court, N.D. California. | August 26, 2010 | Not Reported in F.Supp.2d | 2010 WL 3447743

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that Prison Guard J. Hernandez and Inmate Appeals **Officer** N. Grannis violated his constitutional rights. For the reasons that follow, the Court dismisses N. Grannis and serves J. Hernandez. A federal court must conduct a preliminary...

...SUCH MOTION; DENYING REQUEST FOR APPOINTMENT OF COUNSEL LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...1983 alleging that Prison Guard J. Hernandez and Inmate Appeals **Officer** N. Grannis violated his constitutional rights. For the reasons that...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

95. Tatum v. Puget
United States District Court, N.D. California. | August 27, 2010 | Not Reported in F.Supp.2d | 2010 WL 3447733

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various Pelican Bay State Prison ("PBSP") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. A federal court must conduct a preliminary screening in any case...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...all attachments thereto, and copies of this order on CORRECTIONAL **OFFICERS** C. UPTERGROVE, D. JAMES, T. PUGET, D. BRADBURY, R. COX...

96. Montoya v. Holland
United States District Court, N.D. California. | November 08, 2010 | Not Reported in F.Supp.2d | 2010 WL 4919480

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various Pelican Bay State Prison ("PBSP") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court orders service on the...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...19, 2010, he was coming out of the shower when **Officer** Whitman opened the door of another inmate, resulting in Plaintiff...

97. Douglas v. Banks

United States District Court, N.D. California. | April 25, 2011 | Not Reported in F.Supp.2d | 2011 WL 1576770

Plaintiff Bryan Anthony Douglas, proceeding pro se, filed a second amended civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at San Quentin State Prison ("SQSP"), where he was formerly housed, and at Salinas Valley State Prison ("SVSP"), where he is currently housed. SQSP Defendants have moved to dismiss Plaintiff's...

...DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; FURTHER SCHEDULING ORDER LUCY H. **KOH** , District Judge. Plaintiff Bryan Anthony Douglas, proceeding pro se, filed...

...Decl., Ex. C.) In one instance, when Plaintiff notified an **officer** on duty, the **officer** took the offensive food product away, but refused to replace...

...at SVSP Defendant Dr. Sepulveda has been the Chief Medical **Officer** for SVSP since October 12, 2009. (Decl. Sepulveda at ¶...

98. Delacruz v. State Bar of California

United States District Court, N.D. California, San Jose Division. | January 15, 2020 | Slip Copy | 2020 WL 227237

Plaintiff Daniel Delacruz, Sr. brings suit against a number of individuals and entities related to the denial of his license to practice law. Before the Court are two motions to dismiss: a motion to dismiss filed by Defendants City of Fresno, the Fresno Police Department, Steven Card, Cathy Sherman, and the law firm Ferguson, Praet, & Sherman APC...

...SANCTIONS Re: Dkt. Nos. 33, 34, 35, 49 LUCY H. **KOH** , United States District Judge Plaintiff Daniel Delacruz, Sr. brings suit...

...of action against 54 defendants, including the State Bar, various **officers** of the State Bar, and numerous other individuals and entities...

...at 1–2. Delacruz's allegations begin in February 1997, when **Officer** Steven Card arrested Delacruz for domestic violence on the basis...

99. Maldonado v. Clamon

United States District Court, N.D. California. | September 27, 2010 | Not Reported in F.Supp.2d | 2010 WL 3814313

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court orders service on the Defendants. A federal court must conduct a preliminary screening in any case in which a prisoner seeks...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...unit. Plaintiff was subsequently charged with assault on a peace **officer**. Liberally construed, Plaintiff raises a cognizable claim that Defendants used...

100. Soto v. Henessy

United States District Court, N.D. California. | November 10, 2010 | Not Reported in F.Supp.2d | 2010 WL 4919485

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various San Francisco County Jail ("SFCJ") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court orders service on...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...is improper). Either personal involvement or integral participation of the **officers** in the alleged constitutional violation is required before liability may...

101. Treglia v. Cate

United States District Court, N.D. California. | March 22, 2012 | Not Reported in F.Supp.2d | 2012 WL 987295

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against various Pelican Bay State Prison ("PBSP") officials, including Defendants Matthew Cate, Francisco Jacquez, Ranell Chisman, Glenn Kelley, O'Donnell, Clancy, Scott Kernan, Maureen McLean, Carbrera, Dahard (incorrectly referred to as...

...FOR SUMMARY JUDGMENT; DENYING OTHER MOTION AS MOOT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...of Plaintiff's constitutional rights, and that Defendants are entitled to **qualified immunity**. See Docket no. 86.) Plaintiff filed his opposition. Defendants filed...

...motions for summary judgment, declarations have been filed by Correctional **Officers** R. Graves, D. O'Donnell, and F. Vanderhoofven, with supporting exhibits...

102. Easley v. County of San Benito

United States District Court, N.D. California. | November 24, 2010 | Not Reported in F.Supp.2d | 2010 WL 4922691

Plaintiff, formerly housed at the San Jose Jail and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various San Benito County officials violated his constitutional rights. Plaintiff alleges that on December 11, 2008, Defendants engaged in the false arrest of Plaintiff and illegally searched his car,...

...TO FILE DISPOSITIVE MOTION OR NOTICE REGARDING MOTION LUCY H. **KOH** , District Judge. Plaintiff, formerly housed at the San Jose Jail...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendants are advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendants are...

103. Perry v. McFarland

United States District Court, N.D. California. | November 03, 2011 | Not Reported in F.Supp.2d | 2011 WL 5295308

Plaintiff, proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983 against Defendant Correctional **Officer** C. McFarland. Defendant has moved for summary judgment. Although given an opportunity, Plaintiff has not filed an opposition. Having carefully considered the papers submitted, the Court hereby GRANTS Defendant's...

...se. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, proceeding pro se, filed an amended civil...

...complaint pursuant to 42 U.S.C. § 1983 against Defendant Correctional **Officer** C. McFarland. Defendant has moved for summary judgment. Although given...

...unnecessary to discuss Defendant's assertion that he is entitled to **qualified immunity**. CONCLUSION Defendant's motion for summary judgment is GRANTED. Judgment shall...

104. Rios v. Sayre

United States District Court, N.D. California. | November 13, 2012 | Not Reported in F.Supp.2d | 2012 WL 5503544

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Defendant Chief Medical **Officer** Michael C. Sayre at Pelican Bay State Prison. In his complaint, Plaintiff alleges that Defendant was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Defendant...

...Defendant. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...pursuant to 42 U.S.C. § 1983 against Defendant Chief Medical **Officer** Michael C. Sayre at Pelican Bay State Prison. In his...

...to address Defendant's argument that he is also entitled to **qualified immunity**. IT IS SO ORDERED....

105. Peasley v. Spearman

United States District Court, N.D. California. | March 06, 2017 | Not Reported in Fed. Supp. | 2017 WL 878236

Plaintiff, a California prisoner proceeding pro se, has filed an amended civil rights complaint, pursuant to 42 U.S.C. §1983. In the amended complaint, plaintiff alleges that defendants were deliberately indifferent to his serious medical needs by failing to adequately treat his Type-I diabetes. Defendants Warden Spearman, Chief Medical...

...JUDGMENT; REFERRING CASE TO SETTLEMENT; INSTRUCTIONS TO CLERK LUCY H. **KOH** UNITED STATES DISTRICT JUDGE Plaintiff, a California prisoner proceeding pro...

...treat his Type-I diabetes. Defendants Warden Spearman, Chief Medical **Officer** Ellis, Dr. Bright, **Officer** Orozco, **Officer** Gibson, and Dr. Ahmed have filed a motion to dismiss...

...case to settlement proceedings, and stays the case. Defendant **Officer** Maria L. Lopez has not entered an appearance in this...

106. Sevey v. Broughas

United States District Court, N.D. California. | November 08, 2010 | Not Reported in F.Supp.2d | 2010 WL 4942564

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that Deputy Broughas, an employee of the Lake County Sheriff's Department, violated his constitutional rights. Plaintiff's motions for leave to proceed in forma pauperis are granted in a separate order. For the reasons stated below,...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

107. Derossett v. Correctional Training Facility

United States District Court, N.D. California. | December 20, 2010 | Not Reported in F.Supp.2d | 2010 WL 5388002

Plaintiff, proceeding pro se, filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 against the Correctional Training Facility. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court will serve the complaint upon Defendant. A federal court must conduct a preliminary...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, proceeding pro se, filed a pro se...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

108. Morrison v. O'Reilly

United States District Court, N.D. California. | July 05, 2011 | Not Reported in F.Supp.2d | 2011 WL 2633858

Plaintiff, a California state prisoner, currently housed at California State Prison—Solano, and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. On May 31, 2011, the Court dismissed

this action without prejudice based on Plaintiff's failure to timely submit an application to proceed in forma pauperis ("IFP"), or pay...

...MOTION FOR RECONSIDERATION; REOPENING CASE; ORDER OF SERVICE LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner, currently housed at...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

109. Avery v. County of Santa Clara

United States District Court, N.D. California, San Jose Division. | November 13, 2012 | Not Reported in F.Supp.2d | 2012 WL 5522554

Before the Court is Defendants County of Santa Clara and Jim Lanz's ("Defendants") Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56 ("Motion"). ECF No. 27. Having considered the parties' submissions and the relevant case law, the Court GRANTS the Motion. Plaintiffs Preston and Lois Avery...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Before the Court is Defendants County of Santa...

...concludes that this document is properly authenticated. The Hearing **Officer's** decision names only Mr. Avery. See Clerk's Transcript at 156...

...will refer to "Plaintiffs," plural, in connection with the Hearing **Officer's** decision. During the administrative hearings, Plaintiffs argued that Division 37...

110. R.H. v. Los Gatos Union School District

United States District Court, N.D. California, San Jose Division. | April 02, 2014 | 33 F.Supp.3d 1138 | 2014 WL 1347764

EDUCATION — Athletics. Alleged conduct in falsifying student wrestler's weight did not amount to deliberate indifference.

Synopsis
Background: Middle school student and his father brought action against school district and school's athletic director and wrestling coach, among others, alleging that student suffered injuries during a school-sponsored wrestling match as a result of defendants' negligence and misconduct in violation of his constitutional rights and state law. Defendants moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 defendants' alleged conduct in falsifying student's weight did not amount to deliberate indifference;
2 release signed by student's father barred student's negligence claims.
3 defendants' alleged conduct in falsifying student's weight did not amount to gross negligence; and
4 defendants' alleged conduct did not support a claim for intentional infliction of emotional distress.
Motion granted.

...moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) defendants' alleged conduct in falsifying student's...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiffs R.H. and his father and...

...F.3d 198, 201 (5th Cir.1994) In Wood, an **officer** pulled over the plaintiff at 2:30 a.m., impounded her car, and abandoned her in an area the **officer** knew to have the second-highest rate of crime in...

111. Stutes v. Parrish

United States District Court, N.D. California, San Jose Division. | December 15, 2015 | Not Reported in Fed. Supp. | 2015 WL 8770720

Plaintiff David Stutes ("Plaintiff") brings this action under 42 U.S.C. § 1983 against Defendants Santa Clara County Sheriff's Deputies Jessica Parrish ("Parrish"), Shannon Catalano, Michael Leslie, and Eric Barton (collectively, the "Defendant Deputies"), and the County of Santa Clara (collectively,...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 64 LUCY H. **KOH** , United States District Judge Plaintiff David Stutes ("Plaintiff") brings this...

...Defendants additionally argue that summary judgment is appropriate based on **qualified immunity** because no clearly established law provides that the evidence available...

...cause requires only that those 'facts and circumstances within the **officer's** knowledge are sufficient to warrant a prudent person to believe...

112. Harmon v. Mack

United States District Court, N.D. California. | November 24, 2010 | Not Reported in F.Supp.2d | 2010 WL 4920837

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various Salinas Valley State Prison ("SVSP") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court orders service on the...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendants are advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendants are...

113. Peasley v. Spearman

United States District Court, N.D. California, San Jose Division. | November 14, 2017 | Not Reported in Fed. Supp. | 2017 WL 5451709

Plaintiff David Scott Peasley ("Plaintiff"), a California prisoner, filed an amended pro se civil rights complaint pursuant to 42 U.S.C. §1983. ECF No. 31. In the amended complaint, Plaintiff alleged that defendants were deliberately indifferent to his serious medical needs by failing to adequately treat his Type-I diabetes....

...ORDER DENYING STIPULATION Re: Dkt. No. 197, 203 LUCY H. **KOH** , United States District Judge Plaintiff David Scott Peasley ("Plaintiff"), a...

...treat his Type-I diabetes. Defendants Warden Spearman, Chief Medical **Officer** Ellis, Dr. Bright, **Officer** Orozco, **Officer** Gibson, and Dr. Ahmed have filed a motion to dismiss...

...and motion for summary judgment. Defendants' motion also lists **Officer** Maria L. Lopez as a moving defendant, but Lopez cannot...

114. Law v. Johnson

United States District Court, N.D. California, San Jose Division. | July 13, 2012 | Not Reported in F.Supp.2d | 2012 WL 2906570

On February 14, 2011, Defendant Robert Johnson, Deputy District Attorney for the County of Santa Clara ("Defendant"), filed a motion to dismiss Plaintiff's complaint with prejudice. ECF No. 8 ("MTD"). On March 7, 2012, Plaintiff Audry Wayne Law ("Plaintiff") opposed the motion. ECF No. 2. On March 14, 2012, Defendant filed a reply. ECF No. 16. On...

...TO DISMISS; DENYING PLAINTIFF'S MOTION TO APPOINT COUNSEL LUCY H. **KOH** , District Judge. On February 14, 2011, Defendant Robert Johnson, Deputy...

...11 (9th Cir.2010) "However, prosecutors are entitled to only **qualified immunity** when they perform investigatory or administrative functions, or are essentially functioning as police **officers** or detectives." Waggy, 594 F.3d at 710–11 (internal...

...The Court agrees with Defendant. Claims for damages against state **officers** for actions performed in their official capacities are barred under...

115. Parrish v. Solis

United States District Court, N.D. California, San Jose Division. | May 13, 2014 | Not Reported in Fed. Supp. | 2014 WL 1921154

Plaintiff Kaheal Parrish, a prisoner incarcerated at Salinas Valley State Prison ("SVSP"), filed this lawsuit on March 18, 2011 alleging violations of his civil rights by several prison officials. ECF No. 1. Plaintiff's original complaint named as defendants A. Solis, B. Hedrick, W. Muniz, K. Salazar, R. Machuca, B....

...MOTION FOR LEAVE TO FILE A SUR–REPLY LUCY H. **KOH** , United States District Judge Plaintiff Kaheal Parrish, a prisoner incarcerated...

...Correctional Sergeant at SVSP, and the remaining defendants are Correctional **Officers** at SVSP. Id. at ¶¶14–18, 20. According to...

...of the Inspector General, by 2003 a group of correctional **officers** at SVSP formed a gang called "The Green Wall" which...

116. Larson v. Cate

United States District Court, N.D. California. | April 11, 2013 | Not Reported in F.Supp.2d | 2013 WL 1502024

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights action under 42 U.S.C. § 1983. For the reasons stated below, the Court dismisses the complaint in part, and orders service upon named Defendants. A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner proceeding pro se...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendants are advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendants are...

117. Estrada v. Sayre

United States District Court, N.D. California. | July 28, 2014 | Not Reported in Fed. Supp. | 2014 WL 3728161

Plaintiff, proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. §1983 against Dr. Michael Sayre ("Dr.Sayre") and Nurse Practitioner C. Malo–Clines ("Malo–Clines") at Pelican Bay State Prison ("PBSP"). Plaintiff alleges that both defendants were...

...Nos. 45, 55, 73, 80, 81, 84, 85.) LUCY H. **KOH** , United States District Judge Plaintiff, proceeding pro se, filed an...

...being escorted back to his cell, one of the escorting **officers** asked plaintiff why plaintiff was continuing to litigate Estrada l...

...this claim, it is unnecessary to address defendants' argument for **qualified immunity**. 3. Retaliation Plaintiff claims that, on November 14, 2011, plaintiff...

118. Blackburn v. Monterey County Jail

United States District Court, N.D. California. | August 30, 2010 | Not Reported in F.Supp.2d | 2010 WL 3448385

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that Physician's Assistant Terry Whiting and the Monterey County Jail violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. A federal court must conduct a preliminary...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

119. Montoya v. Holland

United States District Court, N.D. California. | March 08, 2012 | Not Reported in F.Supp.2d | 2012 WL 762112

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at Pelican Bay State Prison ("PBSP"). Plaintiff alleges that Defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Defendants have moved for...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...Plaintiff was coming out of the shower when a correctional **officer** opened the door of another inmate, resulting in Plaintiff and...

...hand. Id. at ¶ 17.) Plaintiff believes that the correctional **officer** told RN Holland to minimize Plaintiff's injuries. Id. at ¶...

120. Estrada v. Malo-Clines

United States District Court, N.D. California. | December 27, 2010 | Not Reported in F.Supp.2d | 2010 WL 5422576

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that two Pelican Bay State Prison ("PBSP") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court denies Plaintiff's motion...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

121. Sunnergren v. Ahern

United States District Court, N.D. California. | October 27, 2010 | Not Reported in F.Supp.2d | 2010 WL 4366189

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against employees of the Alameda County Sheriff's Department. Plaintiff's motion for leave to proceed in forma pauperis is granted in a separate order. The procedural history of this action is a bit unusual. Normally, when a pro se prisoner...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...liable under a respondeat superior theory, Ahern is entitled to **qualified immunity**, and Plaintiff fails to allege that Ahern had a role...

122. Douglas v. Banks

United States District Court, N.D. California. | March 09, 2012 | Not Reported in F.Supp.2d | 2012 WL 822824

Plaintiff Bryan Anthony Douglas, proceeding pro se, filed a second amended complaint ("SAC") pursuant to 42 U.S.C. § 1983 against prison officials at San Quentin State Prison ("SQSP") and Salinas Valley State Prison ("SVSP"), where he was formerly housed. In an Order dated April 25, 2011, the Court granted SVSP Defendants' motion for summary...

...ORDER GRANTING SQSP DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff Bryan Anthony Douglas, proceeding pro se, filed...

...arriving at SQSP he "could not instruct dining staff nor **officers** that allergens were to be avoided due to lack of...

...with him to the dining hall to show the food **officers** in order to make them aware of his food allergy...

123. Sunnergren v. Cate

United States District Court, N.D. California. | June 25, 2012 | Not Reported in F.Supp.2d | 2012 WL 2395768

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that several Pelican Bay State Prison ("PBSP") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court orders...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...1202, 1207 (9th Cir.2011) Supervisory defendants are entitled to **qualified immunity** where the allegations against them are simply "bald" or "conclusory...

124. Larson v. Cate

United States District Court, N.D. California. | January 08, 2013 | Not Reported in F.Supp.2d | 2013 WL 123632

Plaintiff, a California state prisoner proceeding pro se, filed a civil rights action under 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court dismisses the complaint in part, and orders service upon named Defendants. A federal court must conduct a preliminary...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner proceeding pro se...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendants are advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendants are...

125. Patten v. Stone

United States District Court, N.D. California. | March 03, 2014 | Not Reported in Fed. Supp. | 2014 WL 878836

Plaintiff, a state prisoner proceeding pro se, filed a second amended civil rights complaint ("SAC") pursuant to 42 U.S.C. §1983 against defendants at San Quentin State Prison ("SQSP"). In his SAC, plaintiff alleges that defendants were deliberately indifferent to his serious dental needs in violation of...

...JUDGMENT (Docket Nos. 159, 161, 175, 178, 192) LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...No. 162 ("Pl.Decl.") at ¶4.) Plaintiff told defendant Correctional **Officer** Upshaw about it, and she merely laughed. (SAC at 4...

...did not exhibit deliberate indifference; and defendants are entitled to **qualified immunity**. Plaintiff was transferred out of SQSP on April 3...

126. Brown v. Flores

United States District Court, N.D. California. | October 03, 2018 | Slip Copy | 2018 WL 9838120

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff was granted leave to proceed in forma pauperis ("IFP"). On May 22, 2018, the court dismissed plaintiff's complaint with leave to amend because it failed to state a claim. The court advised...

...LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California state prisoner proceeding...

...plaintiff's cell flooded. Plaintiff alleged that he informed defendants Correctional **Officers** C. Flores, A. Chavez, T. Grady, and T. Guiterrez about...

...0337, 2006 WL 1049739 (E.D. Cal. April 20, 2006) (granting **qualified immunity** to defendants when prisoner slipped and fell in puddle of...

127. Hadden v. Adams

United States District Court, N.D. California. | December 07, 2018 | Not Reported in Fed. Supp. | 2018 WL 6438362

Plaintiff, a California prisoner proceeding pro se, has filed a civil rights complaint, pursuant to 42 U.S.C. §1983. In the complaint, plaintiff alleges that defendants Dr. Gamboa, Dr. E. Sullivan, Dr. M. Danial, and Dr. K. Kumar were deliberately indifferent to his serious medical needs by failing to provide appropriate medications and...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 64 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California prisoner proceeding pro...

...medications and pain relief to plaintiff, and defendants Chief Medical **Officer** ("CMO") M. Sepulveda, Chief Executive **Officer** ("CEO") G. Ellis, California Correctional Health Care Services ("CCHSC") Chief L.D. Zamora, Chief Medical Executive **Officer** ("CMEO") A. Adams, and Chief Primary Health Care Provider D...

...not exhibit deliberate indifference, and that defendants are entitled to **qualified immunity**. The court views the facts in the light most favorable...

128. Blackburn v. Whiting

United States District Court, N.D. California. | January 11, 2011 | Not Reported in F.Supp.2d | 2011 WL 90113

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that Physician's Assistant Terry Whiting and the Monterey County Jail violated his constitutional

rights. On August 30, 2010, this Court dismissed the Monterey County Jail, granted Plaintiff leave to amend, and ordered that Defendant...

...DIRECTING DEFENDANT TO FILE DISPOSITIVE MOTION OR NOTICE LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...noted that "[w]ithout the possibility of some relief, the administrative **officers** would presumably have no authority to act on the subject...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

129. Estrada v. Sayre

United States District Court, N.D. California. | July 30, 2013 | Not Reported in Fed. Supp. | 2013 WL 3957752

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights complaint ("AC") pursuant to 42 U.S.C. § 1983. In his AC, Plaintiff alleges that Defendants were deliberately indifferent to his serious medical needs (Claims 1 and 3), Defendants violated state law by failing to provide necessary medical...

...SCHEDULING (Docket Nos. 16, 22, 26, 27, 29) LUCY H. **KOH** , United States District Judge Plaintiff, a California state prisoner proceeding...

...amended complaint. Defendant Michael Sayre ("Dr.Sayre") is the Chief Medical **Officer** at Pelican Bay State Prison ("PBSP"). (AC at 2.) Defendant...

...the right to file administrative appeals alleging misconduct by correctional **officers**. Cal.Code Regs. tit. 15, § 3084.1(e) In order...

130. Treglia v. Sayre

United States District Court, N.D. California. | March 22, 2012 | Not Reported in F.Supp.2d | 2012 WL 1029372

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various Pelican Bay State Prison ("PBSP") medical personnel violated his constitutional rights. Specifically, Plaintiff alleges that Defendants Dr. M.C. Sayre, Warden Lewis, Dr. Nancy Adam, (incorrectly referred to as "Adams" in...

...FOR SUMMARY JUDGMENT; DENYING REMAINING MOTIONS AS MOOT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...the SHU pursuant to the policy from the Chief Medical **Officer**. Id., ¶ 69.) Dr. Williams prescribed Naprosyn 5 at 500...

...When he brought it to the attention of the supervising **officers**, he was directed to submit a medical slip. Id. Plaintiff...

131. Mugno v. Hazel Hawkins Memorial Hospital

United States District Court, N.D. California, San Jose Division. | May 25, 2017 | Not Reported in Fed. Supp. | 2017 WL 2289222

Plaintiff Diana Mugno ("Plaintiff") sues Defendants Hazel Hawkins Memorial Hospital ("Hazel Hawkins"), San Benito Health Care District ("the District"), and Kenneth Underwood ("Underwood") (collectively, "Defendants") for causes of action arising out of Plaintiff's termination. ECF No. 5...

...MOTIONS TO DISMISS Re: Dkt. Nos. 15, 16 LUCY H. **KOH** , United States District Judge Plaintiff Diana Mugno ("Plaintiff") sues Defendants...

...FAC ¶¶6, 9, 11. Underwood is the Chief Executive **Officer** ("CEO") of the District. Id. ¶12. District Defendants...

...March 31, 2016, Plaintiff sent an email to Chief Nursing **Officer** Lois Owens ("Owens"), and reported to Owens the fact that...

132. Haney v. Sullivan

United States District Court, N.D. California. | March 04, 2019 | Not Reported in Fed. Supp. | 2019 WL 1024409

Plaintiff is a California prisoner incarcerated at Salinas Valley State Prison ("SVSP"). He has filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983. In the operative pleading, plaintiff asserts two claims. Plaintiff's first claim, for violation of the Eighth Amendment, is pled against five defendants: M....

...Re: Dkt. No. 40, 48, 49, 50, 55 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff is a California prisoner incarcerated...

...the right to file administrative appeals alleging misconduct by correctional **officers**. See id. Under the regulations, as amended effective January 28...

...if plaintiff were entitled to damages, defendants are entitled to **qualified immunity**. Finally, defendants argue plaintiff failed to exhaust his Eighth Amendment...

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Jane Beckering
Nominee to be United States District Judge, Western District of Michigan

1. **Who should respond to a domestic violence call where there is an allegation that the aggressor is armed—the police or a social worker?**

   Response: As a sitting judge on the Michigan Court of Appeals, I do not involve myself in policymaking, and I do not possess enough information about the field of police enforcement and staffing strategies to have formed an opinion regarding your question.

2. **Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest racial injustice?**

   Response: Because issues related to Covid-19 restrictions remain a matter of public debate that have been the subject of several legal proceedings, as have cases arising out of various protests, it would be improper for me to weigh in on this topic, as issues arising from these events may come before me as a sitting Michigan Court of Appeals judge.

3. **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: Because issues related to Covid-19 restrictions remain a matter of public debate that have been the subject of several legal proceedings, it would be improper for me to weigh in on this topic, as issues arising from these events may come before me as a sitting Michigan Court of Appeals judge. If faced with a case involving a law regarding social distancing, masks, limits on religious exercise, or vaccinations, I would be guided by relevant United States Supreme Court decisions, including *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). In that case, the Court concluded that governmental regulations are not neutral and generally applicable, and therefore, they trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise, even when the state treats some comparable secular businesses and other activities as poorly or even less favorably than the religious exercise at issue.

4. **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?**

Response: The President's authority to remove officials is presumably governed by applicable constitutional, statutory, and perhaps regulatory provisions, as well as any applicable caselaw. If faced with a case involving the President removing a senior official from office, I would apply the applicable law to the record in the case before me. One example is *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010).

5. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

Response: Yes. The 'stop and frisk' doctrine was enunciated by the Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968).

6. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

Response: I cannot speak to what Judge Jackson said in 2013, because I do not know. As for my own opinion, I do not identify with any particular constitutional interpretive ideology, such as "originalism" or "living constitutionalism." As a Michigan Court of Appeals judge I am duty-bound to apply the applicable test or framework that has been established by the United States Supreme Court when evaluating various Constitutional provisions, just as I would be if confirmed as a federal district court judge. The Supreme Court has considered most of the constitutional provisions in depth, interpreted their meaning, identified the values the provisions were designed to promote, and, in most cases, formulated a test or framework within which to evaluate new claims associated with each provision. I follow that precedent.

7. **Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?**

Response: Not to my knowledge.

8. **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 know what you mean by "identity." In general, criminal defendants enjoy a right to counsel, but the U.S. Supreme Court has not held that there is a corresponding right to counsel in civil cases.

9. **Do you agree with the proposition that some clients don't deserve representation on account of their:**
   a. **Heinous crimes?**

Response: No, I do not agree. The Sixth Amendment provides that in criminal prosecutions, the accused shall have the assistance of counsel for his or her defense. That includes people who are accused of heinous crimes.

b. Political beliefs?

Response: A person's political beliefs are protected by the First Amendment. Those beliefs should not be used against a person to deprive them of representation.

c. Religious beliefs?

Response: A person's religious beliefs are protected by the First Amendment. Those beliefs should not be used against a person to deprive them of representation.

10. Should judicial decisions take into consideration principles of social "equity"?

Response: Judicial decisions should be grounded in the law, and should not be influenced by outside principles unless the law calls for such consideration to be taken into account.

11. Robin DiAngelo is the author of *White Fragility*, an "anti-racist" tome published in 2018. In a 2020 *The New York Times Magazine* featured an article titled "'White Fragility' Is Everywhere. But Does Anti-Racism Training Work?," where the author describes the focus of DiAngelo's book, stating that:

> **Running slightly beneath or openly on the surface of DiAngelo's and Singleton's teaching is a set of related ideas about the essence and elements of white culture. For DiAngelo, the elements include the 'ideology of individualism,' which insists that meritocracy is mostly real, that hard work and talent will be justly rewarded. White culture, for her, is all about habits of oppressive thought that are taken for granted and rarely perceived, let alone questioned.[1]**

You have touted the benefits of hard work to high school students in speeches that you have delivered. How do you square your prior comments with DiAngelo's views about white culture?

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[1] Daniel Bergner, *The New York Times Magazine*, "'White Fragility' Is Everywhere. But Does Anti-Racism Training Work?," July 15, 2020 (updated Aug. 6, 2021), available at: https://www.nytimes.com/2020/07/15/magazine/white-fragility-robin-diangelo.html

Response: I have not read the book, *White Fragility*, nor have I read the 2020 article you identify from *The New York Times Magazine*. As a general principle, I believe that hard work is a good work ethic.

12. During your investiture in October 2007, you relied on a quote from the Honorable Oliver Wendell Holmes, Jr. and stated that he was "perhaps our greatest jurist of all time."[2]

a. What do you understand his judicial philosophy to promote?

Response: My understanding is that Justice Holmes is one of the most widely cited Supreme Court justices of the 20th Century, particularly for his opinions on civil liberties and American constitutional democracy.

b. Do you agree with his judicial philosophy?

Response: I believe that Justice Holmes was an influential jurist, but I have not studied his opinions in an effort to determine whether I agree with his judicial philosophy as a general principle.

c. Do you intend to emulate his judicial philosophy if you are confirmed to the federal bench?

Response: I do not intend to emulate any judge's philosophy. I simply intend to honor my duties as a judge fully, faithfully, and impartially.

13. While campaigning for your seat on the Michigan Supreme Court, in speeches, you noted that "[c]ourts used to protect people from the arbitrary whims of the majority. Today the court has become a political tool of the majority. It has got to stop." At the time, Republicans held the majority. Now that Democrats are in the majority, do you agree with your prior statement that the courts should not be used as a "political tool of the majority"?

Response: I absolutely still believe that courts should not be used as a political tool of the majority. The judiciary is our nonpartisan branch of government. Judicial activism is inappropriate and should never be used to further a partisan agenda.

14. In 2008, you were the Keynote Speaker at an event hosted by the ABA on May 1, 2008, in celebration of the 50th Anniversary of Law Day titled "The Rule of Law: Foundation for Communities of Opportunity and Equity."[3] During your speech, you listed several examples of "stability and predictability" that are preserved by the Rule of Law and that we take for granted, including:

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[2] SJQ 12(D) at *1294.
[3] SJQ 12(D) at *1255.

When we wake up and listen to the news, we feel free to criticize the talking heads, politicians, our government as a whole, and weigh in on how it is being run, as our current presidential campaign process so ably demonstrates. We know that by doing so, no one is going to barge into our kitchen and haul us away for treason. [Freedom of Speech, first Amendment][4]

Last week, Attorney General Merrick Garland announced imminent action against parents protesting various policies being implemented at public schools across the country.

a. Do you still believe the Rule of Law exists in the United States?

Response: Yes, I still believe the Rule of Law exists in the United States.

b. Do you think it is appropriate for the DOJ to weaponize federal law enforcement agencies against concerned parent discussing changes to their children's curriculum at local school board meetings?

Response: As a sitting judge, I cannot comment on remarks made by Attorney General Merrick Garland or on the propriety of DOJ actions. It is possible that legal issues arising out of the public debate regarding various policies implemented at public schools may come before me for determination.

c. Which of the following groups of people have the right to protest government intrusion and/or overreach and why?

i. **Concerned parents about the curricula in public schools?**

Response: Yes. The First Amendment protects the rights of both free speech and assembly. Although the government may impose rules regarding demonstrations that are designed to protect the public safely, it may not discriminate against particular viewpoints.

ii. Black Lives Matter protestors?

Response: Yes. The First Amendment protects the rights of both free speech and assembly. Although the government may impose rules regarding demonstrations that are designed to protect the public safely, it may not discriminate against particular viewpoints.

iii. Climate change protestors?

Response: Yes. The First Amendment protects the rights of both free speech and assembly. Although the government may impose rules

[4] SJQ 12(D) at *1258.

regarding demonstrations that are designed to protect the public safely, it may not discriminate against particular viewpoints.

iv. Religious groups protesting abortion?

Response: Yes. The First Amendment protects the rights of both free speech and assembly. Although the government may impose rules regarding demonstrations that are designed to protect the public safely, it may not discriminate against particular viewpoints.

15. Is climate change real?

Response: As a sitting judge, I refrain from commenting on matters of public debate in the event laws are passed or lawsuits are filed that might require me to rule on a related issue. Climate change is the subject of public debate.

16. Is gun violence a public-health crisis?

Response: As a sitting judge, I refrain from commenting on matters of public debate in the event laws are passed or lawsuits are filed that might require me to rule on a related issue. Gun violence and whether it is a public-health crisis is the subject of public debate.

17. Is racism a public-health crisis?

Response: As a sitting judge, I refrain from commenting on matters of public debate in the event laws are passed or lawsuits are filed that might require me to rule on a related issue. Various topics related to racism are matters of public debate.

18. What is implicit bias?

Response: My understanding of implicit bias is that individuals may unconsciously attribute particular characteristics to an individual or a group of individuals based on assumptions or stereotypes. These assumptions are believed to be pervasive, even if unintentional. And while they can be positive or negative, both can be harmful when they influence decision-making. As a sitting judge, my role is to fully, faithfully, and impartially discharge my duties in the cases or controversies that come before me without any form of bias. To ensure that I do so, I approach every case the same way. I keep an open mind, carefully listen to and make sure I understand the arguments of the parties, study the record carefully, and analyze and apply the law based on the facts of record.

19. Is the federal judiciary affected by implicit bias?

Response: Ensuring that our federal judicial system operates fairly and impartially regardless of race is a worthwhile pursuit, as equal protection is a core principle in the

Constitution. But the study of racial impacts associated with our laws and legal administration, such as our sentencing guidelines, are matters reserved to policy makers. As a sitting judge, my role is to fully, faithfully, and impartially discharge my duties in the cases or controversies that come before me without regard to race. If faced with a claim of racial disparities, I would evaluate the claim based on the applicable law and the record before me.

20. Do you have any implicit biases? If so, what are they?

Response: My understanding of implicit bias, which entails unconsciously attributing particular characteristics to an individual or a group of individuals based on assumptions or stereotypes, is pervasive. And while these assumptions can be positive or negative, both can be harmful when they influence decision-making. As a sitting judge, my role is to fully, faithfully, and impartially discharge my duties in the cases or controversies that come before me without any form of bias. To ensure that I do so without being influenced by any implicit biases, I approach every case the same way. I keep an open mind, carefully listen to and make sure I understand the arguments of the parties, study the record carefully, and analyze and apply the law based on the facts of record before me.

21. Can someone change his or her biological sex?

Response: As a sitting judge, I refrain from commenting on matters of public debate in the event laws are passed or lawsuits are filed that might require me to rule on a related issue. I am aware that the extent to which the law recognizes gender transitions for purposes of legal rights or classifications tied to a person's sex is a matter of public debate. Thus, it would be inappropriate for me to comment.

22. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

Response: In contrast to mere criticism of an opinion, certain attacks on a sitting judge could rise to the level of imminent threats or defamation. If a case came before me regarding an attack on a sitting judge, I would consult relevant criminal statutes and First Amendment law.

23. Do you think the Supreme Court should be expanded?

Response: Because this question is the subject of ongoing political debate, it would be inappropriate for me to offer an opinion.

24. Do you believe that we should defund police departments? Please explain.

Response: I am aware of the ongoing public debate about how to best allocate public safety resources in seeking to balance the need to protect the public from criminal activity while preserving the legal rights of citizens who encounter the police in that process. As a sitting judge on the Michigan Court of Appeals, I do not involve myself in policymaking, and it is inappropriate for me to weigh in on any matters that may come before me, just as it would be were I to be confirmed as a federal district court judge.

25. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: I am aware of the ongoing public debate about how to best allocate public safety resources in seeking to balance the need to protect the public from criminal activity while preserving the legal rights of citizens who encounter the police in that process. As a sitting judge on the Michigan Court of Appeals, I do not involve myself in policymaking, and it is inappropriate for me to weigh in on any matters that may come before me, just as it would be were I to be confirmed as a federal district court judge.

26. Do you believe legal gun purchases have caused the violent crime spike?

Response: I have not studied the correlation between legal gun purchases and violent crime rates, so I am unable to answer this question.

27. How do you understand the difference, if any, between freedom of religion and freedom of worship?

Response: The free exercise clause protects both the right to believe in whatever religion one chooses (freedom of worship) and the right to practice one's religion (freedom of religion). The latter is considered a more expansive term that includes the rights of believers to evangelize, change their religion, have schools and charitable institutions, and participate in public discourse about religion. The Supreme Court has distinguished between religious belief and actions based on those beliefs and has issued several opinions recently concerning and protecting the latter.

28. Do you believe that the federal government should decriminalize possession of all drugs?

Response: Drug law issues are matters of public policy. As a judge sitting on the Michigan Court of Appeals, I do not weigh in on policy matters, and it is possible that legal controversies regarding such matters may come before me.

29. Do you agree with Thomas Jefferson that the First Amendment erects "a wall of separation between Church & State"?

Response: I agree that the First Amendment provides that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." As pointed out in recent Supreme Court precedent, however, that does not mean the state and the government never intersect. In *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), for example, the Court held that the if the state offers public scholarship funds for a private school, it cannot discriminate against a religious school solely because of the religious character of the school. The same principle applied in *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012 (2017), which pertained to a denial of the church's application for a grant to purchase rubber playground surfaces. Denying a generally available benefit solely on account of religious liberty imposes a penalty on the free exercise of religion that can only be justified by passing the strict scrutiny test.

30. Do you agree that the First Amendment is more often a tool of the powerful than the oppressed?

Response: The question is so broad that I do not have enough information to form an opinion.

31. What is the legal basis for a nationwide injunction?

Response: Nationwide injunctions are deemed to be an equitable remedy employed by courts to bind the federal government in its relations with nonparties. I understand that the legal basis for nationwide injunctions is a matter of ongoing dispute, as exemplified in the Supreme Court's memorandum opinion in *Department of Homeland Security v. New York*, 140 S. Ct. 599 (2020) and the dissent in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). Were I to be confirmed as a federal district judge and a party were to seek a nationwide injunction, I would carefully study the issue and any existing precedent at that time.

32. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), the Supreme Court determined that the Second Amendment secures "an individual right to keep and bear arms" without regard to militia service. The core right recognized is "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. But the Court did not establish the legal standard to evaluate Second Amendment claims. If confirmed as a federal district judge in the U.S. District Court for the Western District of Michigan, I would follow the legal standard adopted by the Sixth Circuit in *United States v. Greeno*, 679 F.3d 510 (2012) and *Tyler v. Hillsdale County Sheriff's Department*, 837 F.3d 678 (2016). The Sixth Circuit applies a two-step framework to resolve Second Amendment challenges. Under the first prong, "the court asks whether

the challenged law burdens conduct that falls within the scope of the Second Amendment right, as historically understood." *Greeno*, 679 F.3d at 518. If the government demonstrates that the challenged statute regulates activity falling outside the scope of the right, then the analysis can stop there and the law is not subject to further Second Amendment review. *Id.* But if the government cannot establish this, "then there must be a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights." Id. In *Tyler*, the Sixth Circuit applied intermediate scrutiny to evaluating challenges to 18 U.S.C. § 922 and similar prohibitions. *Tyler*, 837 F.3d at 692.

33. Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."

a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?

Response: The Religious Freedom Restoration Act provides that the government may not substantially burden a person's free exercise of religion, even if that burden results from a rule of general applicability, unless the government can demonstrate that the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 20000bb-1. A person whose religious exercise has been burdened in violation of the RFRA may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the government. Once the religious adherent has established a substantial burden, the action is valid only if the government shows that the burden is in furtherance of a compelling governmental interest and it is the least restrictive means of furthering that interest.

b. How is a burden deemed to be "substantial[]" under current caselaw? Do you agree with this?

Response: The Supreme Court in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014), noted its repeated admonition that courts must not presume to determine the plausibility of a religious claim. The court's narrow function is to determine whether the line drawn between complying with the law and having it violate their religious beliefs reflects an "honest conviction." The Court's analysis of a substantial burden requires it to ask type of religious exercise the law burdens and what type if impact the law has on that exercise.

34. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

Response: As a sitting Michigan Court of Appeals judge and nominee for a federal district court position, I generally refrain from publicly addressing any personal opinion I might have regarding U.S. Supreme Court opinions and other binding precedent. I do so out of respect for the higher courts whose opinions bind my own, and out of my regard for our system of justice and the role judges play in fairly, faithfully, and impartially applying the law. Regardless of whether I agree with *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), it remains binding precedent and I would faithfully apply that precedent.

35. Does illegal immigration impose costs on border communities?

Response: I have no knowledge about the costs imposed on border communities caused by immigration issues.

36. Do Blaine Amendments violate the Constitution?

Response: In *Espinoza v. Montana Department of Revenue*, 140 S. Ct 2246 (2020), the Supreme Court determined that a "no-aid" provision in the Montana Constitution, which was a Blaine Amendment, as applied in Rule 1 of an income tax credit program, discriminated on a religious basis, and was subject to strict scrutiny. In that case, the state declined to provide scholarship funds for students to attend private schools. The Supreme Court held that Rule 1 violated the Free Exercise Clause because it barred religious schools from public benefits solely because of the religious character of the schools. The court in *Espinoza* noted that many of the no-aid provisions in various state constitutions "belong to a more checkered tradition shared with the Blaine Amendment of the 1870's, which was "born of bigotry" and "arose at a time of pervasive hostility to the Catholic Church and to Catholics in general." *Id.* 140 S. Ct. at 2259. It further stated, "[t]he no-aid provisions of the 19th century hardly evince a tradition that should inform our understanding of the Free Exercise Clause." *Id.*

37. Do parents have a constitutional right to direct the education of their children?

Response: Yes.

38. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

a. Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?

Response: No.

c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?

Response: Yes. On February 1, 2021, I received an email from Christopher Kang inviting me to watch a webinar that would provide an overview of the judicial nomination process for those interested in applying. I had already submitted my application on January 30, 2021, but I registered and watched the webinar on February 2, 2021. After the President announced his intent to nominate me on June 30, 2021, I received an email from Mr. Kang congratulating me on my nomination. I replied, thanking him for his email.

39. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."

a. Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

Response: No.

c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

Response: No.

40. Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."

a. Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. 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.

Response: I have had no interactions with this organization or any of its subsidiaries.

c. Are you currently in contact with anyone associated with Arabella Advisors? 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.

d. Have you ever been in contact with anyone associated with Arabella Advisors? 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.

41. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."

a. Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with the Open Society Foundations?

Response: No.

c. Have you ever been in contact with anyone associated with the Open Society Foundations?

Response: No.

42. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."

a. Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

Response: No.

c. Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

Response: No.

43. 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 July 2017, Senators Debbie Stabenow and Gary Peters issued a press release indicating that they were accepting applications from candidates interested in nomination for a federal judgeship. I submitted my application on July 27, 2017. I interviewed with the Western District Judicial Advisory Committee on November 29, 2017. On February 16, 2018, I interviewed with the White House Counsel's Office.

In January 2021, Senators Debbie Stabenow and Gary Peters issued a press release indicating that they were accepting applications from candidates interested in nomination for a federal judgeship. I submitted my application on January 30, 2021. I interviewed with the Western District Judicial Nominations Committee on March 16, 2021. I was contacted by my senators on April 17 and 19, 2021, regarding my name being forwarded to the White House Counsel's Office. I interviewed with attorneys from the White House Counsel's Office on April 21, 2021. On April 23, 2021, I was contacted by the White House Counsel's Office and advised that I had been selected for Justice Department vetting. After that, I was in contact with officials from the Office of Legal Policy at the Department of Justice. After the Justice Department and FBI vetting,

I had another interview with attorneys from the White House on June 25, 2021. On June 30, 2021, the President announced his intent to nominate me, and I was officially nominated on July 13, 2021.

44. 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: Other than as described in my answer to Question 38, I have had no other communications with anyone from Demand Justice.

a. **Did anyone do so on your behalf?**

Response: No.

45. 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.

46. 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.

47. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations. If so, what was the nature of those discussions?

Response: No.

a. Did anyone do so on your behalf?

Response: No.

48. During your selection process did you talk with any officials from or anyone directly associated with Fix the Court. If so, what was the nature of those discussions?

Response: No.

a. Did anyone do so on your behalf?

Response: No.

49. 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 16, 2018, I interviewed with the White House staff from the prior administration when being considered for a nomination. On April 21, 2021, I interviewed with the present White House staff. On April 23, 2021, I was contacted by a White House staff member and advised that I had been selected for Justice Department vetting. The following day I spoke with a member of the Justice Department about paperwork required for the vetting process. I had a couple of conversations with the Justice Department staff member in charge of my vetting. I had another interview with attorneys from the White House on June 25, 2021, and on June 29, 2021, I received a phone call from a White House staff member advising me I would be nominated. On June 30, 2021, the President announced his intent to nominate me, and I was officially nominated on July 13, 2021. I have had several meetings since June informing me of scheduling associated with the senate hearing, turning in my financial disclosure forms, completing and submitting the Senate Judicial Questionnaire, discussing what to expect at the nomination hearing, and sending to me questions from the Senators.

50. Please explain, with particularity, the process whereby you answered these questions.

Response: I received these questions on October 13, 2021. I prepared answers based on my own knowledge, including regarding topics I had studied in anticipation of questions that might be asked of me at my nomination hearing. I also conducted relevant legal research. I submitted my draft answers to the Office of Legal Policy for feedback, and after receiving that feedback, I finalized my answers for submission on October 18, 2021.

Nomination of Jane M. Beckering
to be United States District Judge for the Western District of Michigan Questions
for the Record
Submitted October 13, 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 on the Michigan Court of Appeals, and now a nominee for the federal district court, I generally refrain from publicly weighing in on whether I agree or disagree with binding precedent. I do so out of respect for the higher courts whose pronouncements bind my own, and out of my regard for our system of justice and the role judges play in faithfully and impartially applying the law.

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 in *District of Columbia v. Heller*, 554 U.S. 570 (2008) held that it is an individual right, belonging to individual persons.

5. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).**

   Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court held that governmental regulations are not neutral and generally applicable, and therefore, they trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise, even when the state treats some comparable secular businesses and other activities as poorly or even less favorably than the religious exercise at issue.

6. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 141 S. Ct. 1858 (2021).**

Response: In *Terry v. United States*, 141 S. Ct. 1858 (2021), the Supreme Court held that a sentence reduction under the First Step Act, enacted in 2018, is only available if an offender's conviction of a crack cocaine offense triggered a mandatory minimum sentence. More specifically, crack offenders sentenced under 21 U.S.C. § 841(b)(1)(C) do not have a "covered offense" under Section 404 of the First Step Act because a sentence reduction under the Act is available only if an offender's prior conviction of a crack cocaine offense triggered a mandatory minimum sentence.

7. **Please describe what you believe to be the Supreme Court's holding in *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021).**

Response: In *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021), the Supreme Court held that neither of Arizona's two election regulations at issue, which governed how ballots are collected and counted, violated Section 2 of the Voting Rights Act of 1965 (VRA) or had a racially discriminatory purpose. One election policy outlawed ballot collection and another banned out-of-precinct voting. The Court declined to announce a test to govern all VRA Section 2 claims involving rules like the ones at issue in the case, which specify the time, place, or manner for casting ballots. Rather, it identified certain guideposts.

8. **Please describe what you believe to be the Supreme Court's holding in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).**

Response: In *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Supreme Court held in a plurality opinion that three Immigration and Nationality Act (INA) provisions at issue, 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c), could not plausibly be interpreted as implicitly placing a six-month limit on detention or requiring periodic bond hearings. In the case, the plaintiff, a Mexican citizen and lawful United States resident was detained after a 2004 incident. He was detained pursuant to a warrant under 8 U.S.C. § 1226, which states that on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. The plaintiff claimed that immigrants had the right to a bond hearing without a "prolonged" detention according to 8 U.S.C. § 1225.

9. **Please describe what you believe to be the Supreme Court's holding in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).**

Response: In *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), the Supreme Court concluded that President Donald Trump's Presidential Proclamation 9645, 82 Fed. Reg. 45161 (2017), did not violate the Immigration and Nationality Act or the Establishment Clause by suspending the entry of aliens from several nations. The Proclamation placed entry

restrictions on the nationals of eight foreign states whose systems for managing and sharing information about their nationals the President deemed inadequate. The Court concluded that substantial deference must be accorded to the Executive in the conduct of foreign affairs and the exclusion of aliens, including pursuant to 8 U.S.C. § 1182(f), which provides that the President has authority to restrict the entry of aliens whenever he finds that their entry "would be detrimental to the interests of the United States."

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

Response: As a sitting judge, I have no opinion regarding the use of arbitration as a litigation alternative in civil cases. As a sitting judge, I am also called upon to evaluate the enforceability of arbitration clauses, so it would be imprudent for me to express any opinion about the benefits or disadvantages of 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 these questions on October 13, 2021. I prepared answers based on my own knowledge, including regarding topics I studied in anticipation of questions that might be asked of me at my nomination hearing. I also conducted relevant legal research. I submitted my draft answers to the Office of Legal Policy for feedback, and after receiving that feedback, I finalized my answers for submission on October 18, 2021.

12. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.

Response: No.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Jane M. Beckering, Nominee for the Western District of Michigan

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. **When former Governor Jennifer Granholm nominated you to the Michigan Court of Appeals, you explained why you were selected in an outline for a speech. You said, "Why me: Been complaining for years, Granholm called me off the sidelines, do something about it." You were selected because of your political viewpoints, and you were proud of the chance to serve as a Democrat on the bench. When you received your judicial commission, did you "do something about" the issues you had complained about?**

   Response: In my speech outline, I was referring to the fact that I had voiced concerns that the Michigan Supreme Court was losing its nonpartisan identity and appearing to inject political ideologies into its rulings so as to shape the law, rather than merely interpreting and applying it. Throughout my campaign, I ran on a platform of ensuring that all parties who appear before the court would be treated fairly and impartially, whether they be individuals, corporations, the government, plaintiffs, or defendants. I wanted to be a part of the process of returning the Michigan Supreme Court to a nonpartisan body. My desire to "do something about" it was to give up my successful private practice in order to serve the public and be the type of judge all lawyers wanted to see on the other side of the bench: fair and impartial. I have been on the bench for the past fourteen years, and having presided over 4,000 cases that have resulted in the issuance of written opinions, one-third of which I wrote, I believe my track record in those rulings is the record evidence that demonstrates my fidelity to the rule of law, wherever it leads.

2. **You have harshly criticized conservative jurisprudence. Specifically, you previously credited the composition of the Michigan Supreme Court for allowing "partisanship [to] invade the Halls of Justice, eroding the rights of citizens it was designed to protect." You have also lamented the influence of organizations like the Federalist Society on the Michigan judiciary. Do you believe partisanship and organizations like the Federalist society are "invading the Halls of Justice" in the federal courts?**

   Response: The remarks I made in the fall of 2006 during my campaign for the Michigan Supreme Court were in keeping with my view that politics does not belong in the judiciary, and that there should not be a litmus test, such as membership in any particular organization, when selecting highly qualified people for the bench who can be fair and impartial. Talented judges can come from a wide variety of different backgrounds. Since becoming a judge in 2007, I have not engaged in similar campaign-style speech. I highly respect judges who honor their oath of office.

3. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be an religious organization like Little Sisters of the Poor or small businesses operated by observant owners? What are those limits?**

Response: Yes. When evaluating claims regarding matters of religion and government, the U.S. Supreme Court has looked to the establishment and free exercise clauses of the First Amendment. the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 20000bb with respect to federal laws (in *City of Boerne v. Flores*, 521 U.S. 507 (1997) the RFRA was declared unconstitutional as applied to the states; it was later amended by the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to clarify that it is only applicable to federal laws); and the RLUIPA, 42 U.S.C. § 2000cc-1(a). These laws guarantee that religious individuals and organizations will have substantial autonomy to act consistently with their religious beliefs.

The RFRA protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). Under the RFRA, the federal government "shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability," except when the government demonstrates that the application of that burden furthers a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. §§ 2000bb-1(a), (b). In *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014), the Supreme Court recognized that a for-profit corporation falls within the definition of the Religious Freedom Restoration Act's protection of a "person's" exercise of religion.

Regarding limits upon what the government can require of institutions, in both *Burwell v. Hobby Lobby* and *Little Sisters of the Poor Saints Peter and Paul Home v. Pennyslvania*, 140 S. Ct. 2367 (2020), the Supreme Court applied the RFRA and concluded that the Affordable Care Act (ACA) substantially burdened the plaintiff employers' free exercise of closely held religious obligations by requiring them to provide their employees with certain methods of contraception.

For constitutional free-exercise challenges, where a challenged law is neutral and of general applicability and has merely an "incidental effect" on a plaintiff's religious beliefs, defendants need not show a compelling governmental interest. *Church of Lukumi Babalu Aye, Inc., v. City of Hialeah*, 508 U.S. 520 (1993); see also *Emp., Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 878 (1990). Where the challenged law does not meet these requirements, defendants must show that the policy is narrowly tailored to serve a compelling state interest. *Church of the Lukumi Babalu v. Aye*, 508 U.S. at 531-32. Facial neutrality is not necessarily determinative of the question whether a law is neutral. For example, if the object of the law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral. *Id.* at 533. Regulations are not deemed neutral and of general applicability whenever they treat nonsecular activities more favorably than religious exercise; the court must evaluate the risk various activities pose, not the reason why people gather. *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). If a law authorizes the government to grant unrestricted discretionary exemptions and the government declines to grant them to those invoking religious liberty, it is not of general applicability. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021). If the

governmental body adjudicating a free exercise defense to the application of a neutral law of general applicability exhibits hostility toward a person's religious beliefs, the religious neutrality protected by the Constitution is defeated. *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

If I am confirmed as a federal district court judge in the United States District Court for the Western District of Michigan, I would be bound by Sixth Circuit precedent. That would include *Roberts v. Neace*, 958 F.3d 409, 413 (6th Circ. 2020) (a law may not be motivated by animus toward people of faith in general or one faith in particular); *Cavin v. Michigan Department of Corrections*, 927 F.3d 455 (6th Circ. 2019) (the right of inmates to exercise their religion, as protected by RLUIPA, is evaluated under a test that is like a "three-act play. In Act One, the inmate must demonstrate that he seeks to exercise religion out of a 'sincerely held religious belief. . . . In Act Two, he must show that the government substantially burdened that religious exercise. . . . In Act three, the government must meet the daunting compelling-interest and least-restrictive means test."); and *Hartmann v. Stone*, 68 F. 3d 973 (1995) (a law is not neutral and of general applicability if it discriminates on its face).

4. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo,* 141 S. Ct. 63 (2020), the Supreme Court granted injunctive relief to the diocese plaintiff with respect to the governor's executive order, enjoining the governor from enforcing its 10- to 25- person occupancy limits on attendance at religious services in areas classified as "red" or "orange" zones, finding that it violated the Free Exercise Clause of the First Amendment because the regulations treated houses of worship much more harshly than comparable secular facilities.

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

Response: Yes.

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

Response: As set forth in Article II of the Constitution, the executive power is vested in the President. Before taking office, the President shall solemnly swear or affirm that "he

will faithfully execute the Office of President of the United States, and will to the best of [his] Ability, preserve, protect, and defend the Constitution of the United States." Generally speaking, the executive branch is responsible for enforcing federal laws. However, in our tripartite system of government, the executive branch also has broad discretion with respect to enforcement decisions. See *Wayte v. U.S.*, 470 U.S. 1524, 607 (1985). "This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis courts are competent to undertake." *Id.*

7. **Describe how you would characterize your judicial philosophy on the bench in Michigan thus far, and identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

Response: I believe that as the nonpartisan branch of government, it is crucial for courts to be a level playing field for all litigants, be they individuals, corporations, plaintiffs or defendants. Judges must faithfully, fairly, and impartially apply the law to the facts of the case before them, wherever that leads. I do not identify with any judicial philosophy other than to uphold my oath of office. To ensure quality and consistency, I approach each case with the same framework. First, I listen to the parties' arguments with an open mind and make sure that I fully understand each parties' position. I then carefully review the record evidence in the case. Finally, I study the law and apply it to the facts of the case or controversy before me. I also believe it is important for judges to clearly and concisely explain their rulings, such that even if a party disagrees with the outcome, they can be reassured that their cause was given careful consideration. Because I do not identify with a particular ideology or philosophy of judging, I could not identify a specific U.S. Supreme Court Justice whose philosophy is closest to my own.

8. **In your own words, please briefly describe your understanding of the interpretative method known as originalism.**

Response: My understanding of the interpretative method known as originalism comports with the *Black's Law Dictionary* (Tenth Edition) definition, which describes it as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted."

9. **In your own words, please briefly describe your understanding of the interpretive method often referred to as living constitutionalism.**

Response: My understanding of the interpretative method known as living constitutionalism comports with the *Black's Law Dictionary* (Tenth Edition) definition, which describes it as "[t]he doctrine that the Constitution should be interpreted and

applied in accordance with changing circumstances and, in particular, with changes in social values."

10. If you were to be presented with a constitutional issue of first impression—that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?

Response: In my experience presiding in over 4,000 cases that have resulted in the issuance of written opinions and thousands more that have been resolved by orders on motions in the Michigan Court of Appeals, constitutional questions arise on a regular basis in criminal matters and on a periodic basis in civil matters. I have found that the U.S. Supreme Court has considered most constitutional provisions in depth, identifying the meaning of the provision, the interests it is designed to promote or protect, and in most cases, the applicable test or framework for evaluating new claims implicating that provision. Even when new factual contexts or categories of cases arise, these frameworks apply to my analysis. If confirmed as a federal district court judge, I would follow all binding Supreme Court and Sixth Circuit precedent. Were I to be presented with a constitutional issue of first impression whose resolution is not controlled by binding precedent, I would study and apply Supreme Court or Sixth Circuit rulings that are either directly or analogously applicable to the provision or provisions at issue so as to protect the consistent development of the rule of law.

11. Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?

Response: The U.S. Supreme Court has recognized in some circumstances that, although the core principles embodied in the Constitution do not change, their application may be impacted by contemporary values and understandings. See *Brown v. Board of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. 483, 492-93(1954) ("In approaching this problem [of segregation in schooling], we cannot turn the clock back to 1868 when the [14th] Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout this Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protections of the laws."). If confirmed as a federal district court judge, I would follow all binding Supreme Court and Sixth Circuit precedent.

12. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: The Constitution is our nation's fundamental, foundational law, and it codifies the core values of the people. It is deemed to be the intention of the people to the

intention of their agents. It can be changed through the Article V amendment process. Designed to be an enduring foundational document, the U.S. Supreme Court has been called upon to interpret and apply it in new factual contexts, such as with respect to the people's rights under the Fourth Amendment when it comes to searches of a cell phone in *Riley v. California*, 573 U.S. 373 (2014). While the Supreme Court has applied the protections of the Constitution to circumstances that were not envisioned by the framers, in doing so it has endeavored to be faithful to the principles reflected in the Constitution as enacted. See *Carpenter v. U.S.*, 138 S. Ct. 2206, 2213-2214, 2223 (2018).

13. President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: Because this is a topic of ongoing political debate, and I am a sitting judge and nominee for the federal district court, it would be imprudent for me to express any opinion. If confirmed, I will continue to abide by the precedent issued by the Supreme Court, regardless of its size or composition.

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

Response: Yes, as declared by the Supreme Court in *District of Columbia v. Heller,* 554 U.S. 570 (2008) and applied to the states in *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

15. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: Each right under the Constitution must be evaluated and applied on its own terms, using the applicable level of scrutiny associated with its protection set forth in U.S. Supreme Court rulings or other binding circuit court precedent. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court did not establish the level of protection provided to Second Amendment claims. If confirmed as a federal district judge in the U.S. District Court for the Western District of Michigan, I would follow the legal standard adopted by the Sixth Circuit in *United States v. Greeno*, 679 F.3d 510 (2012) and *Tyler v. Hillsdale County Sheriff's Department*, 837 F.3d 678 (2016). The Sixth Circuit applies a two-step framework to resolve Second Amendment challenges. Under the first prong, "the court asks whether the challenged law burdens conduct that falls within the scope of the Second Amendment right, as historically understood." *Greeno*, 679 F.3d at 518. If the government demonstrates that the challenged statute regulates activity falling outside the scope of the right, then the analysis can stop there and the law is not subject to further Second Amendment review. *Id.* But if the government cannot establish this, "then there must be a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second

Amendment rights." *Id.* In *Tyler*, the Sixth Circuit applied intermediate scrutiny to evaluating challenges to 18 U.S.C. § 922 and similar prohibitions. *Id.* at 692.

16. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: Please see my answer to Question 18. In that answer, I describe the level of protection provided for gun rights. With regard to the right to vote, it receives its own level of protection, as articulated in *Crawford v. Marion County Election Board*, 128 S. Ct. 1610 (2008). To satisfy the equal protection standard, a government's burden on voting rights must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation. Evenhanded restrictions that protect the integrity and reliability of the electoral process itself are not invidious and satisfy the equal protection standard set forth in *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966). But, even rational restrictions on the right to vote are invidious if they are unrelated to voter qualifications. *Id.* at 1616.

17. If you are to join the federal bench, and supervise along with your colleagues the court's human resources programs, will it be appropriate for the court to provide its employees trainings which include the following:

a. One race or sex is inherently superior to another race or sex;

Response: I do not know what training programs are provided at the United States District Court for the Western District of Michigan, or for whom such trainings may be provided. And I am not aware whether judges have any role in providing trainings. To the extent this answers your question, I would expect that any trainings must be consistent with the law and thoughtfully designed to promote the sound and impartial administration of justice.

b. An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;

Response: I do not know what training programs are provided at the United States District Court for the Western District of Michigan, or for whom such trainings may be provided. And I am not aware whether judges have any role in providing trainings. To the extent this answers your question, I would expect that any trainings must be consistent with the law and thoughtfully designed to promote the sound and impartial administration of justice.

c. An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or

Response: I do not know what training programs are provided at the United States District Court for the Western District of Michigan, or for whom such trainings may be provided. And I am not aware whether judges have any role in providing trainings. To the extent this answers your question, I would expect that any trainings must be consistent with the law and thoughtfully designed to promote the sound and impartial administration of justice.

d. Meritocracy or related values such as work ethic are racist or sexist.

Response: I do not know what training programs are provided at the United States District Court for the Western District of Michigan, or for whom such trainings may be provided. And I am not aware whether judges have any role in providing trainings. To the extent this answers your question, I would expect that any trainings must be consistent with the law and thoughtfully designed to promote the sound and impartial administration of justice.

18. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: I do not know what training programs are provided at the United States District Court for the Western District of Michigan, or for whom such trainings may be provided. And I am not aware whether judges have any role in providing trainings. To the extent this answers your question, I would expect that any trainings must be consistent with the law and thoughtfully designed to promote the sound and impartial administration of justice.

19. Is the criminal justice system systemically racist?

Response: While I am generally aware of studies about your question, including a United States Sentencing Commission study that shows increased incarceration rates for black males similarly situated to while males in terms of their crime class and history, as a judge, I am not called upon to evaluate larger issues of race and the law. I am called upon to evaluate individual cases and controversies fairly and impartially, without regard to race, and I would continue to do so if confirmed as a federal district court judge.

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

Response: If faced with a case or controversy alleging that a political appointment was made by considering skin color or sex, I would review and apply U.S. Supreme Court precedent applicable to the type of appointment at issue, if any.

21. Does the President have the authority to abolish the death penalty?

Response: The federal death penalty is codified in 18 U.S.C. § 3591. For that to be changed, Congress has the authority to repeal or amend the statute. Generally speaking, the executive branch is responsible for enforcing federal laws. However, in our tripartite system of government, the executive branch also has broad discretion with respect to enforcement decisions. See *Wayte v. U.S.*, 470 U.S. 1524, 607 (1985). "This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis courts are competent to undertake." *Id.*

22. Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.

Response: In *Alabama Association of Realtors v. HHS*, 141 S. Ct. 2485 (2021), the Supreme Court nullified a nationwide residential eviction moratorium that had been place for nearly a year, concluding that it strained credibility to believe that the statute at issue, 42 U.S.C. § 264(a), granted the CDC the sweeping authority it asserted it had, as such interpretation could permit dramatic administrative overreach.

23. Do you believe that unlawfully setting a building on fire, amidst general rioting, is a violent act?

Response: From your question I gather you may be referring to conduct that has occurred during protest rallies over the past couple of years. As a sitting judge, I regularly preside over criminal appeals. I would be improper for me to answer your hypothetical question as it could cause future litigants to fear that I will prejudge their case.

24. In *Carpenter v. United States*, what criteria did the U.S. Supreme Court use to distinguish between phenomena that are covered by the 4th Amendment 3rd Party Doctrine and those that are not?

Response: In *Carpenter v. U.S.*, 138 S. Ct. 2206 (2018), the Supreme Court considered the privacy expectations of a person whose information is in the hands of third parties. Under the third-party doctrine, a person has no legitimate expectation of privacy, for Fourth Amendment purposes, information he voluntarily turns over to third parties, even though he may have turned it over expecting only that it would be used for a limited purpose. As such, the government is typically free to obtain such information without triggering Fourth Amendment protections. But, an individual maintains a legitimate expectation of privacy in the record of his physical movements, as captured through cell-site location information. In light of a slightly reduced level of privacy expectation, the Supreme Court held that for police to access cell site location information from a cell phone company, the government can compel production of the content of stored communications or related non-content information when specific and articulable facts show that there are reasonable grounds to believe that the contents of a wire or electronic information sought are relevant and material to an ongoing criminal investigation. *Id.* at 2221. This standard of suspicion

is lower than the probable cause requirement for a typical warrant. *Id.* at 2222. And exceptions may exist, such as exigent circumstances. *Id.* at 2223.

25. In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the City of Philadelphia stopped referring children to Catholic Social Services (CCS), a foster care agency, upon discovering that the agency would not certify same-sex couples to be foster parents due to its religious beliefs about marriage. The city did so because it concluded that CCS's refusal to certify same-sex couples violated a non-discrimination provision in its contract with the city as well as the non-discrimination requirements of a city ordinance. At issue before the Supreme Court was whether the Third Circuit properly determined that the city's actions were permissible under *Employment Division, Department of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990), which addressed the concept of neutral and generally applicable laws that incidentally burden religion. Tasked with deciding whether the burden the city had placed on the religious exercise of CSS was constitutionally permissible, the Court concluded that, under the rubric of general applicability, the inclusion of a formal system of entirely discretionary exceptions to the anti-discrimination law rendered the contractual non-discrimination requirement not generally applicable. It held that "[t]he creation of a formal mechanism for granting exceptions renders a policy not generally applicable, regardless of whether any exceptions have been given, because it "invite[s] the government to decide which reasons for not complying with the policy are worthy of solicitude . . . here, at the Commissioner's 'sole discretion.' " *Fulton*, 141 S. Ct. at 1879.

26. In *Americans for Prosperity Foundation v. Bonta*, the Court majority ruled that California's disclosure requirement was facially invalid because it burdens donors' First Amendment rights to freedom of association. However, the majority was evenly split as to which standard of scrutiny should apply to such cases. Please explain your understanding of the two major arguments, and which of the two standards an appellate judge is bound to apply?

Response: Chief Justice John Roberts' opinion calls for an "exacting scrutiny" standard when evaluating governmental disclosure requirements. "Exacting scrutiny" requires a "substantial relation between the disclosure requirement and a sufficiently important government interest" and that the regime be narrowly tailored to the government's asserted interest, even if it is not the least restrictive means of achieving that end. *Americans for Prosperity Foundation v. Bonta,* 141 S. Ct. 2373, 2383-84 (2021). Justice Thomas would apply a strict scrutiny standard, upholding the law only if it is the least restrictive means to serve a compelling state interest. *Id.* 141 S. Ct. at 2390. Justices Gorsuch and Alito declined to conclude that a single standard applies to all disclosure

requirements. *Id.* 141 S. Ct. at 2391. The U.S. Supreme Court has explained that when a fragmented court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the court is the narrowest grounds taken by members who concurred in the judgment. *Marks v. U.S.*, 430 U.S. 188, 193 (1977). In absence of binding precedent as to the applicable standard, I would first determine whether Sixth Circuit precedent establishes a standard. After conducting brief research on the matter, it does not appear that the Sixth Circuit has weighed in on the matter following the *Bonta* decision. If I am confirmed to the federal district court and I encounter a case involving a governmental disclosure requirement, assuming there is still no Sixth Circuit precedent at the time, I would analyze the Supreme Court's decisions in connection with past membership-disclosure cases, as well as freedom of association cases more broadly, in an effort to determine the constitutionally required standard.

27. Explain the Michigan Supreme Court's holdings in its October 2, 2021 opinion issued in *Midwest Institute of Health v. Whitmer*.

Response: In *Midwest Institute of Health, PLLC v. Whitmer*, 506 Mich 332 (2020), the plaintiffs challenged the state's executive orders related to the Covid-19 pandemic and sought injunctive relief. On March 11, 2020, the Governor had proclaimed a state of emergency under both the Emergency Management Act and the Emergency Powers of the Governor Act of 1945. The Governor's orders included various stay-at-home and other restrictions, including the prohibition on bariatric and joint replacement surgeries except for emergencies. The plaintiffs challenged the Governor's statutory authority to issue Executive Orders 2020-17 and 2020-77 beyond 28 days after her announcement of the state of emergency without obtaining legislative approval, and that the orders were void for vagueness. The plaintiffs also raised challenges under the 14th Amendment and Commerce Clause of the U.S. Constitution. The Supreme Court ruled that the Governor lacked authority under the Emergency Manager Act to issue or renew any executive orders related to Covid-19 after her first order expired on April 30, 2020, and that the Emergency Powers Act violated the Michigan Constitution's nondelegation clause.

Senator Josh Hawley
Questions for the Record

Jane Beckering
Nominee, U.S. District Judge for the Western District of Michigan

1. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

   a. **Do you agree with that philosophy?**

      Response: No.

   b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

      Response: I believe that judges are duty bound to faithfully and impartially apply the law, regardless of whether they like the outcome.

2. **What is the standard for exercising each kind of abstention in the court to which you have been nominated?**

   Response: The Rooker-Feldman doctrine holds that lower federal courts should not sit in direct review of state court decisions unless Congress has specifically authorized such relief, such as it did in 28 U.S.C. § 2254 when it authorized federal courts to grant a writ of habeas corpus. The doctrine is gleaned as a negative inference from 28 U.S.C. § 1257, which states that "Final judgements or decrees rendered by the highest court of State in which a decision could be had, may be reviewed by the Supreme Court . . . ."

   The Younger abstention doctrine requires federal courts to abstain from hearing cases involving federal issues already being litigated in state forums. The doctrine applies when three factors are present: (1) there is an ongoing state proceeding; (2) the claim raises important state interests; and (3) the state proceedings provide an adequate opportunity to raise the federal constitutional claims.

   The Pullman abstention doctrine is a doctrine in which federal courts may choose not to hear a case, even if all the formal jurisdictional requirements are met, until the state law question can be resolved in a state court.

   The Burford abstention doctrine allows federal courts to abstain from reviewing certain decisions of state administrative agencies or from otherwise assuming the

functions of state courts in the development and implementation of a state' pubic policies.

Thibodaux abstention entails a federal court's act of declining to exercise its jurisdiction to allow a state court to decide difficult issues of importance in order to avoid unnecessary friction between federal and state authorities.

The adequate and independent state ground doctrine provides that when a litigant petitions the United States Supreme Court to review the judgment of a state court which rests upon both federal and state law, the Supreme Court does not have jurisdiction over the case if the state ground is adequate to support the judgment and is independent of federal law.

The Erie doctrine mandates that a federal court called upon to resolve a dispute not directly implicating a federal question, such as when sitting in diversity jurisdiction, must apply state substantive law, but federal procedural law.

3. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

   Response: No.

   a. **If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.**

      Response: Not applicable.

4. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

   Response: The United States Supreme Court has considered most of the constitutional provisions in depth, and in doing so, it has already interpreted their meaning, determined the values each provision is designed to promote, and in many instances, formulated a test or framework within which to evaluate new or novel claims under the provision. I do not have a position about the role the original public meaning should play, as I follow Supreme Court precedent's position on the matter when a constitutional provision is at issue in a case before me.

5. **Do you consider legislative history when interpreting legal texts?**

   Response: I always start with the text. The purpose of statutory interpretation is to understand and give effect to the intent of the legislature. I consider the meaning of a

term or phrase and its statutory context. If the language of a statute is clear and unambiguous, I presume the legislature intended the meaning expressed in the statute, and further judicial construction is neither required nor permitted. If and only if a statute is ambiguous, meaning it is equally susceptible to more than one interpretation, do I apply the canons of construction, which can include linguistic canons based on grammatical rules and presumptions about usage, and also substantive canons. I may also look to judicial interpretations of analogous statutory language, and possibly legislative history, but only in an effort to shed light on the meaning of the statutory language. Legislative history is not a substitute for the language chosen by the legislature.

a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?

Response: Not all legislative history is the same. Some is clearer and more straightforward than others. But ultimately, I am acutely aware that many changes can be made to legislation after it is introduced, so the focus must be on the statutory text itself.

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: I do not believe laws of foreign nations is relevant when interpreting the provisions of the U.S. Constitution.

6. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: In *Bucklew v. Precythe*, 139 S. Ct. 112 (2019), the Supreme Court clarified that "anyone bringing a method of execution claim alleging the infliction of unconstitutionally cruel pain must meet the *Baze-Glossip* test." In *Baze*, the Court held that a prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt it without a legitimate penological reason. *Baze v. Rees*, 553 U.S. 35, 52 (2008). *Glossip* indicated that this standard governs all Eighth Amendment method of execution claims. *Glossip v. Gross*, 576 U.S. 863, 876-77 (2015). In *Bucklew*, the Court noted that *Baze* and *Glossip* should not be read to suggest that traditionally acceptable methods of execution—such as hanging, the firing squad, electrocution, and lethal injection—are necessarily rendered unconstitutional as soon as

an arguably more humane method like lethal injection becomes available. I have not found Sixth Circuit precedent addressing this issue.

7. **Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

   Response: Yes.

8. **Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

   Response: Not to my knowledge. The Supreme Court weighed in on the issue in *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52 (2009), holding that the availability of DNA testing technologies does not mean that every criminal conviction, or even every criminal conviction involving biological evidence, is suddenly in doubt. The Supreme Court concluded that the task of establishing rules associated with the ordering of DNA testing post-conviction belonged primarily to the legislature.

9. **Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."**

   a. **What do you understand this statement to mean?**

      Response: It means that a judge who is true to his or her oath must make decisions required by the law, even if he or she does not personally agree with the outcome. As Justice Kennedy eloquently stated in his concurrence in *Texas v. Johnson*, 491 U.S. 397, 420-21 (1989), "the hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result." In other words, a judge must faithfully interpret and apply the law wherever it leads.

10. **U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.**

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

Response: Courts, such as mine on the Michigan Court of Appeals, have established protocols for when an opinion should be published. I follow that protocol.

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: My understanding is that the significant increase in caseloads over the past century due to the rising amount of litigation, and the concomitant number of published decisions, prompted the development of criteria calling for publication of only those opinions that are of general precedential value. *Annual Report of the Director of the Administrative Office of the United States Courts* (1964), in *Reports of Proceedings of the Judicial Conference of the United States* (1964).

11. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?

Response: No. I firmly believe that a judge must honor his or her oath of office and faithfully apply the law, fairly and objectively.

12. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: When evaluating claims regarding matters of religion and government, the Supreme Court has looked to the establishment and free exercise clauses of the First Amendment; the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb for federal laws (in *City of Boerne v. Flores*, 521 U.S. 507 (1997), the RFRA was declared unconstitutional as applied to state laws; it was later amended by the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to clarify that it is only applicable to federal laws); and the RLUIPA, 42 U.S.C. § 2000cc-1(a). These laws guarantee that religious individuals and organizations will have substantial autonomy to act consistently with their religious beliefs.

The RFRA covers "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). Under the RFRA, the government "shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability," except when the government demonstrates that the application of that burden furthers a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. §§ 2000bb-1(a), (b).

For constitutional free-exercise challenges, where a challenged law is neutral and of general applicability and has merely an "incidental effect" on a plaintiff's religious beliefs, defendants need not show a compelling governmental interest. *Church of Lukumi Babalu Aye, Inc., v. City of Hialeah*, 508 U.S. 520 (1993); see also *Emp., Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 878 (1990). Where the challenged law does not meet these requirements, defendants must show that the policy is narrowly tailored to serve a compelling state interest. *Church of the Lukumi Babalu v Aye*, 508 U.S. at 531-32. Facial neutrality is not necessarily determinative of the question whether a law is neutral. For example, if the object of the law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral. *Id.* at 533. Regulations are not deemed neutral and of general applicability whenever they treat nonsecular activities more favorably than religious exercise; the court must evaluate the risk various activities pose, not the reason why people gather. *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). If a law authorizes the government to grant unrestricted discretionary exemptions and the government declines to grant them to those invoking religious liberty, it is not of general applicability. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021). If the governmental body adjudicating a free exercise defense to the application of a neutral law of general applicability exhibits hostility toward a person's religious beliefs, the religious neutrality protected by the Constitution is defeated. *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

If I am confirmed as a federal district court judge in the United States District Court for the Western District of Michigan, I would be bound by Sixth Circuit precedent. That would include *Roberts v. Neace*, 958 F.3d 409, 413 (6th Circ. 2020) (a law may not be motivated by animus toward people of faith in general or one faith in particular); *Cavin v. Michigan Department of Corrections*, 927 F.3d 455 (6th Circ. 2019) (the right of inmates to exercise their religion, as protected by RLUIPA, is evaluated under a test that is like a "three-act play. In Act One, the inmate must demonstrate that he seeks to exercise religion out of a 'sincerely held religious belief. . . . In Act Two, he must show that the government substantially burdened that religious exercise. . . . In Act three, the government must meet the daunting compelling-interest and least-restrictive means

test."); and *Hartmann v. Stone*, 68 F.3d 973 (1995) (a law is not neutral and of general applicability if it discriminates on its face).

13. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: See my response to Question No. 13, above.

14. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: The United States Supreme Court has made it clear that people with sincere religious beliefs that their religion prevents or requires certain action are entitled to invoke the Free Exercise Clause without a judicial evaluation of the validity of their interpretations. *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 833-34 (1989). See also *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719 (2018).

In *Fox v. Washington*, 949 F.3d 270, 277 (2020), the Sixth Circuit held that courts are to determine whether the line drawn by the plaintiff between conduct consistent and inconsistent with his or her religious beliefs reflects an "honest conviction." The court noted that sincerity is distinct from reasonableness, and that once a plaintiff alleges that certain conduct violates their sincerely held religious beliefs as they understand them, it is "not within the court's purview to question the reasonableness of those allegations" or to say that the plaintiff's religious beliefs are "mistaken or unsubstantial." *Id.* A properly developed record on the sincerity issue can include testimonial evidence and reference to religious texts. *Id.*

15. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), the Supreme Court held that the Second Amendment confers an individual right to keep and bear arms without regard to militia service. The core right recognized

is "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. *Heller* concluded that the inherent right of self-defense is central to the Second Amendment right, *id.* at 628, and the handgun is the "quintessential self-defense weapon", *id.* at 629. The Court noted that, just as there are limits on the First Amendment's right of free speech, the right protected by the Second Amendment is not unlimited. *Id.* at 570. For example, the Court stated that nothing in its opinion should be read to "cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27. The Court declined in *Heller* to establish a level of scrutiny for evaluating Second Amendment restrictions. *Id.* at 634-635.

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: The cases I have presided over that entailed gun rights and regulations are as follows:

1. *Capital Area Dist. Library v. Michigan Open Carry, Inc.*, 289 Mich. App. 220 (2012).

2. *People v. Minch*, 295 Mich. App. 92 (2011), reversed and remanded, 493 Mich. 87 (2012).

3. *People v. Schwartz*, 2010 WL 4137453 (Mich. Ct. App. Oct. 21, 2010)

16. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: In *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), the Supreme Court concluded that President Donald Trump's Presidential Proclamation 9645, 82 Fed. Reg. 45161 (2017), did not violate the Immigration and Nationality Act or the Establishment Clause by suspending the entry of aliens from several nations. The Proclamation placed entry restrictions on the nationals of eight foreign states whose systems for managing and sharing information about their nationals the President deemed inadequate. The Court concluded that substantial deference must be accorded to the Executive in the conduct of foreign affairs and the exclusion of aliens, including pursuant to 8 U.S.C. § 1182(f),

which provides that the President has authority to restrict the entry of aliens whenever he finds that their entry "would be detrimental to the interests of the United States." The majority opinion referred to *Korematsu v. United States*, 323 U.S. 214 (1944) (which entailed the forcible relocation of U.S. citizens to internment camps, solely and explicitly on the basis of race), because the dissent had relied upon it. The majority found it wholly distinguishable and took the opportunity to make clear that it had long ago been abrogated by subsequent precedent. The Court stated that "it is wholly inapt to liken that morally repugnant [executive] order to a facially neutral policy denying certain foreign nationals the privilege of admission." *Id.* at 2423.

17. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

Response: It is up to the Supreme Court to determine whether its own opinions are no longer good law. As a sitting judge, I am obligated to follow all precedential opinions, regardless of whether I think they may have been abrogated by implication, unless and until the superior court declares it so.

a. If so, what are they?

Response: None.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: I do.

18. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: I have formed no opinion regarding Judge Learned Hand's statement, but I would faithfully follow all precedent if I were assigned to preside over a monopoly claim, including the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act. My understanding is that the two elements of monopolization are (1) the power to fix prices and exclude competitors within the relevant market; and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historical accident.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: See my answer Question 18a.

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: Please see my answer to 18a.

19. Please describe your understanding of the "federal common law."

Response: "Federal common law" is a phrase used to describe common law (i.e. law derived from judicial decisions instead of statutes) that is developed by federal courts. It is my understanding that while common law development is frequent in state courts, it is rare in federal courts.

20. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: Given the principle of dual sovereignty, state courts are free to interpret their constitutional provisions independently of provisions in the federal constitution. That said, states are also free to consider as persuasive authority judicial interpretations as to the scope of identical constitutional rights. A state constitution may provide greater civil rights and liberties, but it may not be interpreted so as to curtail rights that are provided by the federal constitution.

a. Do you believe that identical texts should be interpreted identically?

Response: Please see my answer to Question 20a.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Yes, state constitutions are free to provide greater protections.

21. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954), was correctly decided?

Response: As a sitting judge on the Michigan Court of Appeals, and now a nominee for the federal district court, I generally refrain from publicly weighing in on whether I agree or disagree with binding precedent. I do so out of respect for the higher courts whose pronouncements bind my own, and out of my regard for our system of justice and the role

judges play in faithfully and impartially applying the law. I also believe such restraint contributes to the actual and perceived integrity of the judicial process, as the public benefits from the reassurance that a judge will follow the law and not prejudge cases or controversies that may come before them. Regardless of whether I agree with a Supreme Court decision, it remains binding precedent and I would faithfully apply that precedent.

With that said, the holding in *Brown v. Board of Ed. of Topeka*, 347 U.S. 483 (1954), that de jure segregation is inconsistent with our understanding of equal protection in today's society, is so well-established and widely accepted that the issue is unlikely to ever come before me or another court. For that reason, I can safely make an exception to my general rule and share my opinion that the case was rightly decided.

22. Do federal courts have the legal authority to issue nationwide injunctions?

Response: Nationwide injunctions are deemed to be an equitable remedy employed by courts to bind the federal government in its relations with nonparties. I understand that the legal basis for nationwide injunctions is a matter of ongoing dispute, as exemplified in the Supreme Court's memorandum opinion in *Department of Homeland Security v. New York*, 140 S. Ct. 599 (2020) and the dissent in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). Were I to be confirmed as a federal district judge and a party were to seek a nationwide injunction, I would carefully study the issue and any existing precedent at that time.

a. If so, what is the source of that authority?

Response: Please see my answer to 22a.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Please see my answer to 22a.

23. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my answer to 22a.

24. What is your understanding of the role of federalism in our constitutional system?

Response: The United States was the first nation to adopt federalism as its governing framework. Federalism is a system of government in which power is divided, by a constitution, between a central government and regional governments. Throughout the generations, there have been shifts in differing directions as to whether power should be concentrated at the local or the federal level, often as pursued by the president in power at the time.

25. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my answer to Question 2.

26. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: In addition to the substantive due process rights expressly set forth in the Constitution, the Supreme Court has held that the due process clauses of the Fifth and Fourteenth Amendments also protect those fundamental rights and liberties that are objectively, deeply rooted in this Nation's history and tradition. *Washington v. Glucksberg*, 521 U.S. 702 (1997). The Court has found that the Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. *Id.* at 719. Those rights include the right to direct the education and upbringing of one's children (*Meyer v. Nebraska*, 262 U.S. 390 (1923)); to bodily integrity (*Rochin v. California*, 342 U.S. 165 (1952)); to marital privacy (*Griswold v. Connecticut*, 381 US. 479 (1965)); to marry (*Loving v. Virginia*, 388 U.S. 1 (1967)); to use contraception (*Griswold*; and *Eisenstadt v. Baird*, 405 U.S. 438 (1972)); and to abortion (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)). The Court has also "strongly suggested" that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. *Glucksberg*, 521 U.S. at 720.

The Court's established method of substantive-due-process analysis has two primary features. First it has deemed the Constitution to protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Id.* at 721 (citations and internal quotation marks omitted). Second, it has required in substantive-due-process cases a careful description of the asserted fundamental liberty interest. *Id.*

27. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging

the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: The Free Exercise Clause of the First Amendment to the United States Constitution reflects a critical protection for religious liberty. As a sitting Michigan Court of Appeals judge, I follow Supreme Court's precedent concerning the scope of this liberty.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: The free exercise clause protects both the right to believe in whatever religion one chooses (freedom of worship) and the right to practice one's religion (free exercise of religion). The latter is considered a more expansive term that includes the rights of believers to evangelize, change their religion, have schools and charitable institutions, and participate in public discourse about religion. The Supreme Court has distinguished between religious belief and actions based on those beliefs and has issued several opinions recently concerning and protecting the latter.

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: The Religious Freedom Restoration Act provides that the federal government may not substantially burden a person's free exercise of religion, even if that burden results from a rule of general applicability, unless the government can demonstrate that the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 20000bb-1. A person whose religious exercise has been burdened in violation of the RFRA may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the government. Once the religious adherent has established a substantial burden, the action is valid only if the government shows that the burden is in furtherance of a compelling governmental interest and it is the least restrictive means of furthering that interest.

The Supreme Court in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) noted its repeated admonition that courts must not presume to determine the plausibility of a religious claim. The court's narrow function is to determine whether the line drawn between complying with the law and having it violate their religious beliefs reflects an "honest conviction." The Court's analysis of a substantial burden requires it to ask what type of religious exercise the law burdens and what type of impact the law has on that exercise. I would apply this legal precedent as well as others on point when applying a standard for determining whether a governmental action is a substantial burden on the free exercise of religion.

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: The United States Supreme Court has made it clear that people who hold sincere religious beliefs that their religion prevents or requires certain action are entitled to invoke the Free Exercise Clause without a judicial evaluation of the validity of their interpretations. *Frazee v. Illinios Dept. of Employment Sec.*, 489 U.S. 829, 833-34 (1989). See also *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719 (2018).

In *Fox v. Washington*, 949 F.3d 270, 277 (2020), the Sixth Circuit held that courts are to determine whether the line drawn by the plaintiff between conduct consistent and inconsistent with his or her religious beliefs reflects an "honest conviction." The court noted that sincerity is distinct from reasonableness, and that once a plaintiff alleges that certain conduct violates their sincerely held religious beliefs as they understand them, it is "not within the court's purview to question the reasonableness of those allegations" or to say that the plaintiff's religious beliefs are "mistaken or unsubstantial." *Id.* A properly developed record on the sincerity issue can include testimonial evidence and reference to religious texts. *Id.*

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: In *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014), the Supreme Court recognized that a for-profit corporation falls within the definition of the

Religious Freedom Restoration Act's protection of a "person's" exercise of religion.

With respect to education, in *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171 (2012), the Supreme Court concluded that the ministerial exception applied to a "called" teacher, regarded as one who has been called to their vocation by God, and thus, constituted an affirmative defense to a claim that the school retaliated against her by firing her after she indicated she had spoken with an attorney and intended to assert her legal rights under the Americans with Disabilities Act (ADA) with respect to her development of narcolepsy. The teacher had completed certain academic training requirements, including a course of theological study, and in addition to teaching secular subjects, she taught religion class, led her students in daily prayer and devotional exercises, and took her students on a weekly school-wide chapel service. Likewise, in *Our Lady of Guadalupe v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that religious institutions are exempt from anti-discrimination laws, such as the Age Discrimination in Employment Act (ADEA) and the ADA, when hiring and firing employees who are deemed ministers. It concluded that the First Amendment protects the right of churches and other religious organizations to decide matters of faith and doctrine without governmental intrusion, including who should hold certain important positions.

With regard to education and funding, in *Espinoza v. Montana Department of Revenue*, 140 S. Ct 2246 (2020), the Supreme Court determined that a "no-aid" provision in the Montana Constitution, which was a Blaine Amendment, as applied in Rule 1 of an income tax credit program, discriminated on a religious basis, and was subject to strict scrutiny. In that case, the state declined to provide scholarship funds for students to attend private schools. The Supreme Court held that Rule 1 violated the Free Exercise Clause because it barred religious schools from public benefits solely because of the religious character of the schools. The court in *Espinoza* noted that many of the no-aid provisions in various state constitutions "belong to a more checkered tradition shared with the Blaine Amendment of the 1870's, which was "born of bigotry" and "arose at a time of pervasive hostility to the Catholic Church and to Catholics in general." *Id.* 140 S. Ct. at 2259. It further stated, "[t]he no-aid provisions of the 19th century hardly evince a tradition that should inform our understanding of the Free Exercise Clause." *Id.* The same principle applied in *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012 (2017), which pertained to a denial of the church's application for a grant to purchase rubber playground surfaces. Denying a

generally available benefit solely on account of religious liberty imposes a penalty on the free exercise of religion that can only be justified by passing the strict scrutiny test.

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: Yes. I have presided over the following cases responsive to this question:

1. *Ferrel v. Isrealite House of David*, 2020 WL 1649748 (Mich. Ct. App. Apr. 2, 2020);
2. *Flakes v. New Mt. Vernon Missionary Baptist Church*, 2019 WL 5419633 (Mich. Ct. App. Oct. 22, 2019);
3. *Braverman v. Granger*, 303 Mich. App. 587 (2014);
4. *Hannewald v. Schwertferger*, 2011 WL295589 (Mich. Ct. App. Mar. 1, 2011);
5. *Weishuhn v. Catholic Diocese of Lansing*, 279 Mich. App. 150 (2008).

28. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: The "beyond a reasonable doubt" standard has been the burden of proof in criminal cases as early as 1880. *Miles v. United States*, 103 U.S. 304, 312 (1880). It is the law of the land and I abide by that precedent.

29. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: In a series of later decisions, the United States Supreme Court effectively overturned its ruling in *Lochner v. New York*, 198 U.S. 45 (1905), which had held that New York's limitations on bakers' working hours were

unconstitutional. In *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488 (1955), for example, the Supreme Court unanimously declared, "[t]he day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." Since the end of the *Lochner* era, the Supreme Court has applied a lower standard of review when evaluating restrictions on economic liberty. Because *Lochner* is no longer deemed good law, I do not follow it. I believe that Justice Holmes made the quoted statement in furtherance of his position that the Constitution is not intended to embody a particular economic theory.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: Because *Lochner v. New York* was abrogated, I do not follow it as a sitting judge. Instead, I follow the subsequent precedent and do not deem it prudent to address any personal opinion I might have regarding Supreme Court precedent out of respect for the higher courts whose opinions bind my own, and out of my regard for our system of justice and the role judges play in fairly, faithfully, and impartially applying the law.

30. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

Response: Criminal defendants regularly file habeas corpus petitions in the federal district courts of Michigan after failing to prevail in their conviction appeals, including in cases over which I preside. It would be imprudent for me to provide an opinion on state of the law in this area.

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

Response: Please see my answer to Question 30a.

c. If you disagree with either of these statements, please explain why and provide examples.

Response: Please see my answer to Question 30a.

d. If confirmed, would you treat unpublished decisions as precedential?
Response: No. Unpublished opinions, by design, are not precedential. If there is no binding precedent on point and an unpublished opinion is on all fours with the facts of a case before me, I may consider it for its persuasive authority, and I have done so as a judge on the Michigan Court of Appeals.

e. If not, how is this consistent with the rule of law?

Response: Please see my answer to Question 10b.

f. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: Please see my answer to Question 30d.

g. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: As a sitting judge on the Michigan Court of Appeals, our Michigan Court Rules guide litigants with respect to when it is or is not appropriate to cite to unpublished opinions. If I am fortunate enough to be confirmed as a federal district judge, I would study the applicable court rules and confer with colleagues about common practices and protocols and why they exist.

h. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: Please see my answer to Question 30g.

31. In your legal career:

a. How many cases have you tried as first chair?

Response: Two, one of which lasted at least a week and the other lasted two weeks. I was the sole counsel for my client in both cases.

b. How many have you tried as second chair?

Response: Two, one of which settled during trial, and the other lasted several weeks. I was co-counsel in both cases, and I shared responsibilities with the lead lawyer.

c. How many depositions have you taken?

Response: Several hundred, including at least 100 expert witness depositions.

d. How many depositions have you defended?

Response: Several hundred, including at least 100 expert witness depositions.

e. How many cases have you argued before a federal appellate court?

Response: None.

f. How many cases have you argued before a state appellate court?

Response: None, but I have been a sitting state appellate court judge for 14 years and have presided on over 4,000 cases that have resulted in the issuance of written opinions, one-third of which I wrote, and thousands more cases resolved by order on a motion.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: None that I can recall.

h. How many dispositive motions have you argued before trial courts?

Response: Dozens.

i. How many evidentiary motions have you argued before trial courts?

Response: Dozens.

32. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

Response: My best estimate is around 2,100 hours, maybe more.

b. What portion of these were dedicated to pro bono work?

Response: A very small percentage. I handled a handful of pro bono cases while in private practice.

33. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I understand this to mean that the role of a judge is to call the shots by interpreting and applying the law as written, not making it.

b. Do you agree or disagree with this statement?

Response: I wholeheartedly agree with it. I also agree with Chief Justice Roberts' comment that the same strike zone should apply for all parties.

34. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I believe he meant that a judge must faithfully apply the law even if he does not like the resulting outcome.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: I fully agree with Justice Holmes. As Justice Kennedy eloquently stated in his concurrence in *Texas v. Johnson*, 491 U.S. 397, 420-21 (1989), "the hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result." In other words, a judge must faithfully interpret and apply the law wherever it leads, as that is the proper role of the judiciary.

35. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: I am unable to answer this question without a factual context. If called upon to evaluate whether to award damages or injunctive relief in a case or controversy before me, I would review the applicable law and facts of the case.

36. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

Response: Other than in an opinion as a sitting appellate court judge, no, I have not.

a. If yes, please provide appropriate citations.

Response: Please see my answer to Question 36.

37. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: I never deleted or attempted to delete any content from my social media since I was first contacted about being under consideration for this nomination. After reading the Judicial Conference of the United States Committee on Codes of Conduct Advisory Opinion No. 112 of the Guide to Judiciary Policy, Vol 2B, Ch. 2, which is available at uscourts.gov, I determined that I would no longer maintain a personal Facebook account.

38. What were the last three books you read?

Response: *Greenlights*, by Matthew McConaughey, *Eleanor Oliphant is Completely Fine*, by Gail Honeyman, and *A Gentleman in Moscow*, by Amor Towles.

39. Do you believe America is a systemically racist country?

Response: I am unable to answer the question, as I am not a social scientist and I do not possess the data or statistics necessary to draw such a broad conclusion, if it is even possible to do so. Ensuring that our federal judicial system operates fairly and impartially regardless of race is a worthwhile pursuit, as equal protection is a core principle in the Constitution. But the study of racial impacts associated with our laws and legal administration, such as our sentencing guidelines, are matters reserved to policy makers. As a sitting judge, my role is to fully, faithfully, and impartially discharge my duties in the cases or controversies that come before me without regard to race. If faced with a claim of racial disparities, I would evaluate the claim based on the applicable law and the record before me.

40. What case or legal representation are you most proud of?

Response: I am not proud of only one case in particular. I very much enjoyed private practice, and I often developed personal friendships with my clients, several of whom remain my friends today.

41. Have you ever taken a position in litigation that conflicted with your personal views?

Response: Not that I can recall. For the last 15 years of my private practice before taking the bench, I focused heavily on contingency work, so I had the luxury of choosing my clients and did so on the basis of whether I believed in their case.

a. How did you handle the situation?

Response: Please see my answer to Question 41a.

b. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Absolutely.

42. What three law professors' works do you read most often?

Response: There are no particular law professors whose works I read regularly. As a Judge on the Michigan Court of Appeals, one of the busiest intermediate appellate courts in the country, I focus my time on reading the law itself, rather than law review articles about the law.

43. Which of the Federalist Papers has most shaped your views of the law?

Response: My view of the law has not been shaped by a particular Federalist Paper.

44. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: As a judge on the Michigan Court of Appeals, when I am attempting to interpret and apply the law in a given case, I read all applicable precedent, persuasive authority if there is no precedent, and discuss the law and the case with my panel members. Other than reading and following precedent, there is no particular judicial opinion or law review article that has changed my view about the law.

45. Do you believe that an unborn child is a human being?

Response: The issue of balancing a mother's right of privacy and the government's interest in protecting potential human life is a source of emotional and impassioned debate that is currently very actively being litigated in our courts. For example, the Supreme Court is scheduled to hear oral argument in *Dobbs v. Jackson Women's Health Org.* on December 1, 2021. As a sitting judge and a nominee for the federal

district court, it would be imprudent for me to comment on matters that are currently being debated in our courts, as well as in the political arena.

46. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: Not that I recall.

47. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade*, 410 U.S. 113 (1973)?

Response: No.

b. The Supreme Court's substantive due process precedents?

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

48. Do you currently hold any shares in the following companies:

a. Apple?

Response: No.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

49. Have you ever authored or edited a brief that was filed in court without your name on the brief?

Response: While it is possible that I wrote or edited a brief for a superior while I was a young associate at McDermott, Will & Emery from 1990 to 1992, I believe my name would still have been listed under the name of my superior. From that point on, I'm quite sure my name was on all briefs that I was involved in writing or editing.

a. If so, please identify those cases with appropriate citation.

Response: I can think of no such cases.

50. Have you ever confessed error to a court?

Response: Not that I recall.

a. If so, please describe the circumstances.

51. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: Nominees must tell the truth when testifying under oath before the Senate Judiciary Committee, including when asked to state their views on their judicial philosophy.

Questions for the Record for Judge Jane Beckering
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
Jane M. Beckering, Nominee to United States District Judge for the Western District of Michigan

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

Response: My judicial philosophy is that judges must honor their oath of office and fully, faithfully, and impartially apply the law to the facts of the case or controversy before them, wherever that leads. To ensure quality and consistency, I approach each case with the same procedural framework. First, I listen to the parties' arguments with an open mind and make sure I fully understand each party's position. Second, I carefully review the record evidence. Third, I study the applicable law. And finally, I apply the law to the facts of the case and clearly and concisely explain my analysis so the parties understand my ruling.

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

Response: If the language of the federal statute in question is clear and unambiguous, I would interpret and apply the statute as written without referring to outside sources, except to discern whether existing precedent has already interpreted the statute. In that instance, I would follow binding precedent. If the statute is ambiguous, meaning equally susceptible to more than one interpretation, I would consult U.S. Supreme Court and Sixth Circuit precedent that has either interpreted the statute in question, set forth rules of statutory construction applicable to interpreting the statute in question, or interpreted analogous statutory language. Absent those sources, I may also look at legislative history, but only in an effort to shed light on the meaning of the statutory language. Legislative history is not a substitute for the language chosen by the legislature.

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

Response: I would first examine all relevant precedent that dictates how the constitutional provision at issue is to be interpreted. The U.S. Supreme Court has considered most of the constitutional provisions in depth, interpreted their meaning, and, in most cases, formulated a test or framework within which to evaluate new claims associated with each provision. I would follow that precedent. In the truly exceptional circumstance where this is no existing precedent or guidance, I would follow the fabric of prior rulings to develop the law consistently and predictably in harmony with the existing rulings of the Supreme Court or 6th Circuit.

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

Response: The U.S. Supreme Court has considered most of the constitutional provisions in depth, and in doing so, it has already interpreted their meaning, and in many instances, formulated a test or framework within which to evaluate new or novel claims under the provision. I do not have a position about the role the original public meaning should play, as I follow Supreme Court precedent's position on the matter when a constitutional provision is at issue in a case before me.

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 always start with the text of the statute itself. The purpose of statutory interpretation is to understand and give effect to the intent of the legislature. I consider the meaning of a term or phrase and its statutory context. If the language of a statute is clear and unambiguous, I presume the legislature intended the meaning expressed in the statute, and further judicial construction is neither required nor permitted. If and only if a statute is ambiguous, meaning equally susceptible to more than one interpretation, do I apply the canons of construction, which can include linguistic canons based on grammatical rules and presumptions about usage, and also substantive canons. I may also look to judicial interpretations of analogous statutory language, and possibly legislative history, but only in an effort to shed light on the meaning of the statutory language. Legislative history is not a substitute for the language chosen by the legislature.

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: With respect to statutory provisions the "plain meaning" refers to the public understanding of the relevant language at the time of enactment. With respect to constitutional provisions, the U.S. Supreme Court has considered most of the constitutional provisions in depth, and in doing so, it has already interpreted their meaning, and in many instances, formulated a test or framework within which to evaluate new or novel claims under the provision. I follow Supreme Court precedent's position on the matter when a constitutional provision is at issue in a case before me.

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

Response: The U.S. Supreme Court addressed this issue in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016). It held that 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." *Id.* at 1547. The plaintiff, as the party invoking federal jurisdiction, bears the burden of proving these elements, and at the pleading stage the plaintiff must clearly allege facts demonstrating each element. *Id.* To establish an injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical. *Id.* at 1548. For an injury to be particularized, it must affect the plaintiff in a personal and individual way. *Id.*

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

Response: Congress's powers are derived from Article I of the Constitution. In *McCulluch v. Maryland*, 17 U.S. 316 (1819), the U.S. Supreme Court held that the powers of the government are limited and are "not to be transcended", but that a sound construction of the Constitution "must allow the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it." *Id.* at 39. Congress's powers must be within the scope of the Constitution and consist "within the letter and spirit of the Constitution." *Id.* One example of Congress being provided with implied powers in the Constitution is the "necessary and proper" clause in Article I, sec. 8, paragraph 18.

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 look to existing U.S. Supreme Court and 6th Circuit precedent, assuming the constitutionality of a law has been raised in a case or controversy before me. Congress's powers are derived from Article I of the Constitution. In *McCulluch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court held that the powers of the government are limited, and that those limits are "not to be transcended", but that a sound construction of the Constitution "must allow the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it." *Id.* at 39. Congress's powers must be within the scope of the Constitution and consist "within the letter and spirit of the Constitution." *Id.* One example of Congress being provided with implied powers in the Constitution is the "necessary and proper" clause in Article I, sec. 8, paragraph 18.

9. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: According to U.S. Supreme Court precedent, yes. The Supreme Court has held that, in addition to the rights expressly set forth in the Constitution, the due process clauses of the Fifth and Fourteenth Amendments also protect those fundamental rights and liberties that are objectively, deeply

rooted in this Nation's history and tradition. *Washington v. Glucksberg*, 521 U.S. 702 (1997). The Court has found that the Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. *Id.* at 719. Those rights include the right to direct the education and upbringing of one's children (*Meyer v. Nebraska*, 262 U.S. 390 (1923)); to bodily integrity (*Rochin v. California*, 342 U.S. 165 (1952)); to marital privacy (*Griswold v. Connecticut*, 381 US. 479 (1965)); to marry (*Loving v. Virginia*, 388 U.S. 1 (1967)); to use contraception (*Griswold*; and *Eisenstadt v. Baird*, 405 U.S. 438 (1972)); and to abortion (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)). The Court has also "strongly suggested" that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. *Glucksberg*, 521 U.S. at 720.

The Court's established method of substantive-due-process analysis has two primary features. First it has deemed the Constitution to protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Id.* at 721 (citations and internal quotation marks omitted). Second, it has required in substantive-due-process cases a careful description of the asserted fundamental liberty interest. *Id.*

10. What rights are protected under substantive due process?

Response: Please see my answer to Question 9.

11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: I derive my understanding of what substantive due process rights exist based on the findings of the Supreme Court. With respect to *Lochner v. New York*, 198 U.S. 45 (1905), in a series of later decisions the Court effectively abrogated its ruling, which had held that New York's limitations on bakers' working hours were unconstitutional in violation of the right to contract under the 14th Amendment. In *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488 (1955), for example, the Supreme Court unanimously declared, "[t]he day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." Since the end of the *Lochner* era, the Supreme Court has applied a lower standard of review when evaluating restrictions on economic liberty. Because *Lochner* is no longer deemed good law, I would not follow it.

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

Response: As the Supreme Court noted in *U.S. v. Lopez*, 514 U.S. 549, 552-53 (1995), the Constitution delegates to Congress the power "to regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes." The Court identified three broad categories of activity that Congress may regulate under its Commerce Clause power. "First, Congress may regulate the use of the channels of interstate commerce." *Id.* at 558. "Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." *Id.* "Finally, Congress' commerce authority includes the power to regulate those activities, having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." *Id.*

13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The four generally agreed-upon suspect classifications for purposes of strict scrutiny evaluation are race, religion, national origin, and alienage. See *Graham v. Richardson*, 403 U.S. 365, 371-72; *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). Alienage is a unique category because strict scrutiny is applied for purposes of state law for lawful immigrants, intermediate scrutiny is applied when it comes to the education of unlawfully present immigrant children, and rational basis scrutiny is applied for purposes of federal scrutiny because Congress has the power to regulate immigration. In determining whether someone is entitled to be considered within a suspect classification, a court will look to whether the person is a "discrete and insular minority." See *United States v. Carolene Products Col*, 304 U.S. 144, 152-53, n. 4 (1938). To do so, courts may examine a variety of factors, including whether the person has an inherent trait, whether that trait is highly visible, whether the person is part of a class that has been disadvantaged historically, and whether the person is part of a group that has historically lacked effective representation in the political process. See *Lyng v. Castillo*, 477 U.S. 635, 638 (1986).

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

Response: Foundational. We have a tripartite form of government, with a bicameral Congress, which was specifically designed to make sure no one branch would be able to control too much 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: I would review and apply U.S. Supreme Court and Sixth Circuit precedent regarding the powers granted to that branch in the Constitution, as well as the

principle of separation of powers and what powers are properly delegated to another branch and within the scope of that delegation.

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

Response: None. A judge's duty is to faithfully and impartially apply the law.

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

Response: Both are bad. A constitutional law should not be invalidly struck down, and an unconstitutional law should not be upheld.

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: While I am generally aware of the evolution and timing of various Supreme Court rulings, I have not studied what accounts for any trends. Rather, as a sitting judge, my responsibility is to apply precedent faithfully and impartially, which I would do if confirmed as a federal district court judge.

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

Response: Judicial review refers to the power of each branch of government to interpret the Constitution in matters that pertain to it. Judicial supremacy refers to the fact that the Supreme Court is the ultimate authoritative interpreter of the Constitution. Its decisions are binding on the other branches and levels of government. *Marbury v. Madison*, 5 U.S. 137 (1803),

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 follow the Constitution, and an obligation to respect judicial decisions. Both are important for the rule of law.

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: I have no opinion as to whether Hamilton's principle is important to keep in mind while judging. But I agree that the judicial branch has the power to interpret the law, not make 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: I am unable to answer the question given such a broad hypothetical format. As a sitting state court judge and nominee for the federal district court, I would not want to give any party the impression that I have prejudged the law in a given area or situation.

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: I would apply the specific sentencing factors set forth in 18 U.S.C. § 3553, which do not allow judges to take into account a defendant's group identity. However, judges are obligated to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

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 President Biden's statement, and I am not familiar with any federal statutes that define equity as set forth above. To the extent the term is used outside the legal context, I have no opinion about its proper definition.

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

Response: I understand that the difference between "equity" and "equality" is a topic of public debate in the political, social, and academic realm. As a sitting judge on the Michigan Court of Appeals and nominee for the federal district court bench, I generally refrain from publicly commenting on matters that may lead to legislation or lawsuits that will come before the courts for resolution.

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

Response: Please see my answer to Question 25.

27. How do you define "systemic racism?"

Response: I understand that "systemic racism" refers to procedures and processes in place in our organized society of culture, policy, and institutions that perpetuate racial group inequity.

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

Response: I do not use the term "critical race theory," as I believe it means different things to different people.

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

Response: Please see my answer to Question No. 28, as I do not use the term "critical race theory" due to its varying meanings to different people.

30. 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

Response: None.

b. Arabella Advisors

Response: None.

c. Demand Justice

Response: None.

d. Fix the Court

Response: None.

e. Open Society Foundation

Response: None.

31. Have you spoken with anyone affiliated with the groups listed in Question #30 since you expressed interest in the open seat on the Western District of Michigan?

Response: On February 1, 2021, I received an email from Christopher Kang, of Demand Justice, inviting me to watch a webinar that would provide an overview of the judicial nomination process for those interested in applying. I had already submitted my application on January 30, 2021, but I registered and watched the webinar on February 2, 2021. After the President announced his intent to nominate me on June 30, 2021, I received an email from Mr. Kang congratulating me on my nomination. I replied, thanking him for his email.

32. When you were nominated to the Michigan Supreme Court, you gave several speeches on the conservative composition of the Michigan Supreme Court. You have been quoted saying that "[c]ourts used to protect people from the arbitrary whims of the majority. Today the court has become a political tool of the majority. It has got to stop." What did you mean by that? Is it the courts' role to protect the minority?

Response: I meant that the judiciary is our nonpartisan branch of government. Its sole function is to interpret the law, not make it, and a judge should not engage in judicial activism so as to favor a partisan interest regardless of who appointed that judge to the bench. Judges are duty-bound to faithfully and impartially apply the law without fear or favor. As for the court's role in protecting the minority from the majority, that is a fundamental principle of our constitutional democracy, which allows for majority rule, but coupled with the protection of minority rights (meaning individuals whose partisan representative is not in power) against constitutional overreach by the majority. This principle is embedded into the fabric of our Constitution and its system of checks and balances.

Questions from Senator Thom Tillis
for Jane Beckering
Nominee to be United States District Judge for the Western District of Michigan

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

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: "Judicial activism" occurs when a judge is unwilling or unable to rule as the law requires and instead resolves cases consistent with his or her personal views or how the judge thinks the law should have been written. I consider it inappropriate, as it is antithetical to the role of the judiciary, which is to interpret the law, not make it.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: It is an expectation.

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. As Justice Kennedy eloquently stated in his concurrence in *Texas v. Johnson*, 491 U.S. 397, 420-21 (1989), "the hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result." In other words, a judge must faithfully interpret and apply the law wherever it leads, as that is the proper role of the judiciary, and I believe in America's tripartite system of government.

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 would faithfully apply the Supreme Court's rulings in District of *Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), as well as applicable Sixth Circuit precedent, which includes *United States v.*

Greeno, 679 F.3d 510 (2010) and *Tyler v. Hillsdale County Sheriff's Department*, 837 F.3d 678 (2016).

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 I were called upon as a judge to preside over a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits, I would look to the precedent cited in answer to Question 7, applicable statutes pertaining to the duties of sheriffs with respect to the processing of handgun purchase permits, and any applicable precedent regarding the impact of crises such as the Covid-19 pandemic on an individual's constitutional and statutory gun rights.

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 judge on the Michigan Court of Appeals, I currently follow applicable Michigan law. If I were to be confirmed as a federal district judge, I would follow the process set forth in applicable precedent, including *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), which generally shields government officials from liability for civil damages arising out of their performance of discretionary functions as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: The standard for qualified immunity, as set forth in *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), is binding precedent, and my role as a judge is to follow binding precedent. I would apply that standard unless the law changes, such as if Congress enacts a statute on the issue or if the United States Supreme court enacts a different standard.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: The standard for qualified immunity, as set forth in *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), is binding precedent, and my role as a judge is to follow binding precedent. I would apply that standard unless the law changes, such as if Congress enacts a statute on the issue or if the United States Supreme court enacts a different standard.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the

standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: I have no opinion. If confirmed as a federal district judge and I am called upon to preside over a case involving patent eligibility, I would follow the Supreme Court precedent and any applicable laws passed by Congress on the issue of patent eligibility.

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: With all due respect, I agree with other judicial nominees who have declined to analyze hypothetical scenarios so as not to suggest how I might decide a matter if it were to come before me. If confirmed as a federal judge and I am called upon to preside over a case similar to your hypothetical question, I would apply federal law and applicable Supreme Court precedent, which currently includes *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); and *Mayo Collaborative Services v. Prometheous Laboratories, Inc.*, 566 U.S. 66 (2012).

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: With all due respect, I agree with other judicial nominees who have declined to analyze hypothetical scenarios so as not to suggest how I might decide a matter if it were to come before me. If confirmed as a federal judge and I am called upon to preside over a case similar to your hypothetical question, I would apply federal law and applicable Supreme Court precedent, which currently includes *Alice Corp. Pty. Ltd. v CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Services v. Prometheous Laboratories, Inc.*, 566 U.S. 66 (2012); and *Bilski v. Kappos*, 561 U.S. 593 (2010).

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: With all due respect, I agree with other judicial nominees who have declined to analyze hypothetical scenarios so as not to suggest how I might decide a matter if it were to come before me. If confirmed as a federal judge and I am called upon to preside over a case similar to your hypothetical question, I would apply federal law and applicable Supreme Court precedent, which currently includes *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013); and *Mayo Collaborative Services v. Prometheous Laboratories, Inc.*, 566 U.S. 66 (2012).

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: With all due respect, I agree with other judicial nominees who have declined to analyze hypothetical scenarios so as not to suggest how I might decide a matter if it were to come before me. If confirmed as a federal judge and I am called upon to preside over a case similar to your hypothetical question, I would apply federal law and applicable Supreme Court precedent, which currently includes *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Services v. Prometheous Laboratories, Inc.*, 566 U.S. 66 (2012); *Bilski v. Kappos*, 561 U.S. 593 (2010); and *KSR International Co. v. Teleflex*, Inc., 550 U.S. 398 (2007).

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: With all due respect, I agree with other judicial nominees who have declined to analyze hypothetical scenarios so as not to suggest how I might decide a matter if it were to come before me. If confirmed as a federal judge and I am called upon to preside over a case similar to your hypothetical question, I would apply federal law and applicable Supreme Court precedent, which currently includes *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013); and *Mayo Collaborative Services v. Prometheous Laboratories, Inc.*, 566 U.S. 66 (2012).

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: With all due respect, I agree with other judicial nominees who have declined to analyze hypothetical scenarios so as not to suggest how I might decide a matter if it were to come before me. If confirmed as a federal judge and I am called upon to preside over a case similar to your hypothetical question, I would apply federal law and applicable Supreme Court precedent, which currently includes *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Services v. Prometheous Laboratories, Inc.*, 566 U.S. 66 (2012); and *Bilski v. Kappos*, 561 U.S. 593 (2010).

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: With all due respect, I agree with other judicial nominees who have declined to analyze hypothetical scenarios so as not to suggest how I might decide a matter if it were to come before me. If confirmed as a federal judge and I am called upon to preside over a case similar to your hypothetical question, I would apply federal law and applicable Supreme Court precedent, which currently includes *Alice Corp. Pty. Ltd. 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. Prometheous Laboratories, Inc.*, 566 U.S. 66 (2012); and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007).

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 nominee for the federal district court, it would be imprudent for me to weigh in on whether there should exist certain provisions in patent law such as your hypothetical question describes, as that deals with policy matters.

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: With all due respect, I agree with other judicial nominees who have declined to analyze hypothetical scenarios so as not to suggest how I might decide a matter if it were to come before me. If confirmed as a federal judge and I am called upon to preside over a case similar to your hypothetical question, I would apply federal law and applicable Supreme Court precedent, which currently includes *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); and *Mayo Collaborative Services v. Prometheous Laboratories, Inc.*, 566 U.S. 66 (2012).

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: With all due respect, I agree with other judicial nominees who have declined to analyze hypothetical scenarios so as not to suggest how I might decide a matter if it were to come before me. If confirmed as a federal judge and I am called upon to preside over a case similar to your hypothetical question, I would apply federal law and applicable Supreme Court precedent, which currently includes *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); and *Mayo Collaborative Services v. Prometheous Laboratories, Inc.*, 566 U.S. 66 (2012).

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.

15. Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has

become increasingly important as it informs the lawfulness of a use of digital content and technologies.

a. **What experience do you have with copyright law**?

Response: As a judge on the Michigan Court of appeals, I presided over an abuse-of-process and malicious prosecution case arising out of series of lawsuits claiming copyright infringement, distribution of false copyright information, and the wrongful filing of copyright renewals. The case did not analyze copyright law.

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: None.

c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?

Response: None.

d. What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?

Response: As a judge on the Michigan Court of Appeals the past fourteen years, I have handled a number of cases involving the First Amendment and the right to free speech. None of them have dealt directly with free speech and intellectual property issues.

16. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: If the language of a statute is clear and unambiguous, it is presumed that the legislature intended the meaning expressed, and a court must apply the statute as written. If there is debate about the meaning of legislative text because it is equally susceptible to more than one interpretation, then courts must resort to the canons of construction, which can include linguistic canons based on grammatical rules and presumptions about usage, and also substantive canons. Assuming those measures are unhelpful, I might look to judicial interpretations of analogous statutory language, and possibly legislative history in an effort to discern the meaning of the text.

b. Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?

Response: In *Christensen v. Harris County*, 529 U.S. 576, 587 (2000), the Supreme Court held that when a court is confronted with an interpretation contained in an agency opinion letter, policy statement, agency manual, or enforcement guideline, it does not warrant *Chevron-style* deference. Instead, interpretations contained in such formats are entitled to respect, but only to the extent they have the power to persuade. This is known as *Skidmore* deference, as set forth in *Skidmore v. Swift*, 323 U.S. 134, 140 (1944).

c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?

Response: If I am confirmed as a federal district judge and I am assigned to preside over a case involving the obligation of an online service provider associated with a possible copyright infringement, I would look to applicable law, including the Digital Millennium Copyright Act (DMCA) of 1998 and any other precedent in existence at that time.

17. The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.

a. How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?

Response: Until new laws are passed that may better address the constantly evolving issues raised due to advances in the digital environment, courts must apply existing law.

b. How can judges best interpret and apply prior judicial opinions that relied upon the then-current state of technology once that technological landscape has changed?

Response: If confirmed as a federal district court judge and I am assigned to preside over a copyright infringement case stemming from an internet situation, I would be bound to follow existing Supreme Court precedent and any laws enacted by Congress at that time. As for the Supreme Court, it has the ability to overturn its own precedent, should it conclude that factual circumstances have changed. See *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2096-97 (2018); and *Janus v. AFSCME*, 138 S. Ct. 2448, 2482-83 (2018).

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Shalina Kumar
Judicial Nominee to the U.S. District Court for the Eastern District of Michigan

1. **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." If confirmed, I will faithfully follow all Supreme Court precedent and that of the Sixth Circuit.

2. **Should law firms undertake the pro bono prosecution of crimes?**

   Response: I do not have an opinion on whether it would be appropriate for a law firm to prosecute criminal matters.

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 am not aware of the context of Judge Jackson's statement. I believe the Constitution is an enduring document. If confirmed, I will faithfully follow the precedent as established by the Supreme Court and the Sixth Circuit.

4. **Should a judge yield to social pressure when deciding the outcome of cases?**

   Response: No, it would not be appropriate for a judge to yield to social pressure. A judge should follow the law and the precedent of the Supreme Court.

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 do not have an opinion on whether it would be appropriate for private parties to prosecute federal crimes.

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: I hire law clerks based upon their knowledge and experience. I do not consider memberships in organizations.

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 no opinion on how law firms should make these types of decisions.

8. **Should paying clients be able to influence which pro bono clients engage a law firm?**

   Response: I have no opinion on how law firms should make these types of decisions.

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 be based on the law and the facts of any given case.

11. **Is it ever appropriate for a judge to publicly profess political positions on campaigns and/or candidates?**

    Response: Pursuant to the Michigan Code of Judicial Conduct, Canon 7, it is not appropriate for a judge to publicly endorse partisan candidates or campaigns. It is appropriate for a judge to endorse a judicial candidate. If confirmed, I will follow the Code of Conduct for United States Judges with respect to these and all other issues.

12. **Is threatening Supreme Court Justices right or wrong?**

    Response: Yes, threating a Supreme Court Justice is wrong and interferes with the administration of justice.

13. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

    Response: There is Supreme Court precedent on this issue, and if confirmed, I would faithfully follow that precedent.

14. **Do you think the Supreme Court should be expanded?**

    Response: I have no opinion as this is a policy question for the legislature to determine.

15. **Should a defendant's personal characteristics influence the punishment he or she receives?**

Response: 18 U.S.C. § 3553(a) sets forth the factors to consider when sentencing a defendant. The "nature and circumstances of the offense and the history and characteristics of the defendant" are included in the factors to consider. Race, national origin, sex, creed, and religion are among the factors not to be considered.

16. 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: It is my understanding that the issue and scope of nationwide injunctions are currently being litigated in the federal courts. If confirmed, I would faithfully follow the precedent as established by the Supreme Court and that of the Sixth Circuit.

17. 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 would follow the precedent as established by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and any precedent established by the Sixth Circuit.

18. Do you believe that we should defund police departments? Please explain.

Response: I have no opinion as this is a policy decision for the legislative branch.

19. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: I have no opinion as this is a policy decision for the legislative branch.

20. Is climate change real?

Response: As a judicial nominee, my personal opinion on this issue is irrelevant. If confirmed, I will faithfully follow the precedent established by the Supreme Court and the Sixth Circuit.

21. Is gun violence a public-health crisis?

Response: As a judicial nominee, my personal opinion on this issue is irrelevant. If confirmed, I will faithfully follow the precedent established by the Supreme Court and the Sixth Circuit.

22. Is racism a public-health crisis?

Response: As a judicial nominee, my personal opinion on this issue is irrelevant. If confirmed, I will faithfully follow the precedent established by the Supreme Court and the Sixth Circuit.

23. Is the federal judiciary systemically racist?

Response: I have not researched this issue and have no opinion. As a sitting judge, I handle each matter on an individualized basis without regard to race.

24. Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?

Response: I have not had an opportunity to handle a case regarding this issue. If confirmed, I will faithfully follow Supreme Court and Sixth Circuit precedent.

25. Does illegal immigration impose costs on border communities?

Response: As a judicial nominee, my personal opinion on this issue is irrelevant. If confirmed, I will faithfully follow the precedent established by the Supreme Court and the Sixth Circuit.

26. When was the last time you visited the U.S.-Mexico border?

Response: I have not visited the U.S.-Mexico border.

27. 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.

28. Do Blaine Amendments violate the Constitution?

Response: As a sitting judge and judicial nominee, it would not be appropriate for me to comment on this issue as it could potentially come before me if I were to be confirmed as a federal district court judge. I will faithfully follow the Supreme Court and Sixth Circuit precedent with respect to this issue.

29. Do parents have a constitutional right to direct the education of their children?

Response: In *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Supreme Court held that a parent has a right to direct the education of one's children.

30. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

a. Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?

Response: No.

c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?

Response: I was invited to participate in a webinar prior to the application process. Only the process was discussed. I received a congratulatory email regarding my nomination from Christopher Kang.

31. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."

a. Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

Response: No.

c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

Response: Please see my response to Question 30(c).

32. Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."

a. Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. 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.

Response: N/A

c. Are you currently in contact with anyone associated with Arabella Advisors? 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.

d. Have you ever been in contact with anyone associated with Arabella Advisors? 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.

33. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."

a. Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with the Open Society Foundations?

Response: No.

c. Have you ever been in contact with anyone associated with the Open Society Foundations?

Response: No.

34. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."

a. Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

Response: No.

c. Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

Response: No.

35. 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: Senator Debbie Stabenow announced an opening on the U.S. District Court for the Eastern District of Michigan and supplied an application on her website. I submitted my application in February of 2021 and was selected for an interview by the committee established by Senators Stabenow and Peters. I was interviewed by White House Counsel in April of 2021. The President announced his intent to nominate me on June 30, 2021.

36. 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: Please see my response to Question 30(c).

a. Did anyone do so on your behalf?

Response: Not to my knowledge.

37. 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.

38. 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.

39. 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: Not to my knowledge.

40. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

Response: My initial interview with White House Counsel was April 21, 2021. I have had additional communication with White House Counsel and Office of Legal Policy since that time, but I have no record of the dates.

41. Please explain, with particularity, the process whereby you answered these questions.

Response: I received these questions from the Office of Legal Policy on October 14, 2021. I prepared my responses and submitted them to the Office of Legal Policy.

Senator Marsha Blackburn
Questions for the Record to Shalina D. Kumar

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

   Response: I believe it is the duty of a judge to uphold the Constitution and the laws of our country. A judge should look to the plain meaning and express language of statutes and provisions of the Constitution. A judge is bound to follow case precedent as established by the Supreme Court and the Circuit in which they sit, and to apply the law to the facts of the case in a fair and impartial manner.

2. **What approach do you take when interpreting a statute?**

   Response: I would first look to the plain meaning and express language of the statute. If the statute is unambiguous, the inquiry would stop there. If there is ambiguity, I would look to precedent as established by the Supreme Court and the Sixth Circuit. If there was no binding precedent directly on point, I would look to precedent not directly on point, but which has reasoning that is analogous. I may look to other statutes with similar language and any precedent interpreting that statute. If I am fortunate enough to be confirmed as a district court judge, I would follow Supreme Court precedent with respect to analyzing and interpreting any federal statute.

3. **Do you think it is best to start with the original meaning of the text when interpreting the Constitution?**

   Response: I would first look to the plain meaning and express language of the constitutional provision. If the constitutional provision is unambiguous, the inquiry would stop there. If there is ambiguity, I would look to precedent as established by the Supreme Court and the Sixth Circuit. If there was no binding precedent directly on point, I would look to precedent not directly on point, but which has reasoning that is analogous. I may look to other provisions of the Constitution with similar language and any precedent interpreting that language. If I am fortunate enough to be confirmed as a district court judge, I would follow Supreme Court precedent with respect to analyzing and interpreting any constitutional provision.

Nomination of Shalina D. Kumar
to be United States District Judge for the Eastern District of Michigan Questions for the Record
Submitted October 13, 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: Generally speaking, it is not appropriate for a judge to give his or her opinion about whether any specific Supreme Court case was correctly decided. I will faithfully follow all Supreme Court precedent.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment guarantees an individual's right to possess and carry weapons in case of confrontation.

5. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).**

   Response: The Supreme Court held that treating "any comparable secular activity more favorably than religious exercise" must survive strict scrutiny.

6. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 141 S. Ct. 1858 (2021).**

   Response: The Supreme Court held that the retroactive nature established by the First Step Act was only available if the prior conviction triggered a mandatory minimum sentence.

7. **Please describe what you believe to be the Supreme Court's holding in *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021).**

   Response: The Supreme Court upheld Arizona election policies finding that they did not violate the Voting Rights Act of 1965 and did not have a racially discriminatory purpose.

8. **Please describe what you believe to be the Supreme Court's holding in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).**

   Response: The Supreme Court held that detained aliens do not have the right to periodic bond hearings during the course of their detention.

9. **Please describe what you believe to be the Supreme Court's holding in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).**

   Response: The Supreme Court held that President Trump's Proclamation did not violate his statutory authority or Establishment Clause.

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

    Response: As a judicial nominee, my personal opinion about arbitration is not relevant. I will faithfully follow the law and Supreme Court precedent with respect to arbitration as an alternative to litigation.

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

    Response: I received these questions via email and have prepared my responses.

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 Shalina D. Kumar, Nominee for the Eastern District of Michigan

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. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be an religious organization like Little Sisters of the Poor or small businesses operated by observant owners? What are those limits?**

   Response: There is Supreme Court precedent with respect to this issue, and, if confirmed, I will faithfully follow that precedent along with the Religious Freedom Restoration Act and other federal laws on this subject.

2. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

   Response: The Supreme Court held that the applicants were entitled to a preliminary injunction because they demonstrated a likelihood of success on the merits of their claim, that they would suffer irreparable harm, and to grant the injunction was not against the public interest.

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

   Response: Yes. The free exercise of religion is a fundamental right guaranteed by the First Amendment.

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

   Response: The executive branch has a duty to faithfully execute the laws of our country. I cannot further answer this hypothetical question without the benefit of a specific case and facts presented.

5. **Describe how you would characterize your judicial philosophy on the bench in Michigan thus far, and identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

   Response: I believe it is the duty of a judge to uphold the Constitution and the laws of our country. A judge should look to the plain meaning and express language of statutes and provisions of the Constitution. A judge is bound to follow case precedent as established by the Supreme Court and the Circuit in which they sit and apply the law to the facts of

the case in a fair and impartial manner. I do not identify with any Justice's particular philosophy.

6. Please briefly describe in your own words your understanding of the interpretative method known as originalism.

Response: When interpreting the Constitution or a statute, I would start with the plain meaning and express language of the provision or statute at issue. In addition, I would follow Supreme Court precedent with respect to the role of text and original meaning of constitutional provisions or statutes.

7. Please briefly describe in your own words your understanding of the interpretive method often referred to as living constitutionalism.

Response: I am not familiar with the term "living constitutionalism." I believe the Constitution is an enduring document and fundamental to our system of government.

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: If confirmed as a district court judge, I would start with the plain meaning of the text and would follow Supreme Court precedent with respect to interpretation of the specific language.

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: There is Supreme Court jurisprudence with respect to interpreting provisions of the Constitution, and I would faithfully follow the precedent as established.

10. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: The Constitution is an enduring document and changes must follow the Article V amendment process. Additionally, if confirmed, I would follow Supreme Court precedent with respect to interpretation of constitutional provisions.

11. President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: As a judicial nominee, I do not feel it is appropriate for me to comment on this policy decision.

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

Response: The Supreme Court held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *District of Columbia v. Heller*, 554 U.S. 570 (2008).

13. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: The Supreme Court held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *District of Columbia v. Heller*, 554 U.S. 570 (2008). This right is a fundamental right but is not without limitation.

14. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: As a state court judge for fourteen years, I have not had the opportunity to encounter this issue. If confirmed, I will faithfully follow the precedent as established by the Supreme Court and the Sixth Circuit.

15. If you are to join the federal bench, and supervise along with your colleagues the court's human resources programs, will it be appropriate for the court to provide its employees trainings which include the following:

a. One race or sex is inherently superior to another race or sex;

Response: If confirmed and if I have any role regarding U.S. District Court for the Eastern District of Michigan human resources' programs, I will confer with my colleagues on such issues if they are presented. Training for court employees must be fully consistent with federal law.

b. An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;

Response: Please see my response to Question 15(a).

c. An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or

Response: Please see my response to Question 15(a).

d. Meritocracy or related values such as work ethic are racist or sexist.

Response: Please see my response to Question 15(a).

16. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: Please see my response to Question 15(a).

17. Is the criminal justice system systemically racist?

Response: I understand that there have been studies conducted with respect to this issue, but I have not performed my own research and have not developed an opinion. As a judge, I handle each case before me on an individualized basis.

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

Response: As a judicial nominee and sitting judge, I do not feel it is appropriate for me to opine on a policy matter or make a judgment on the constitutionality of an issue without the benefit of the specific facts of a case.

19. Does the President have the authority to abolish the death penalty?

Response: Under current federal law, the death penalty is a legally available punishment in certain circumstances, and the Supreme Court has upheld its constitutionality. To change federal law would require legislation.

20. Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.

Response: The Supreme Court denied the application to vacate the stay in this case. The per curiam opinion did state that it agreed with the holding of the district court that the CDC had exceeded its authority when it issued the nationwide moratorium on evictions.

21. In *Carpenter v. United States*, what criteria did the U.S. Supreme Court use to distinguish between phenomena that are covered by the 4th Amendment 3rd Party Doctrine and those that are not?

Response: My general understanding of this holding is that the Supreme Court found that the "third-party doctrine" does not extend to cell-site location because of the intrusive nature of this information. The "third-party doctrine" is typically applied in cases where information disclosed to a third-party carries no reasonable expectation of privacy.

22. In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the

Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.

Response: The Supreme Court held that the state action at issue could not survive strict scrutiny where the state had denied an exception to a religious organization but granted such exceptions to other non-religious organizations. *Fulton v. City of Philadelphia*, 141 S. Ct. 1968, 1878 (2021).

23. Explain the Michigan Supreme Court's holdings in *Midwest Institute of Health v. Whitmer*.

Response: The Michigan Supreme Court held that Governor Whitmer did not have the authority to issue executive orders related to the COVID-19 pandemic under the Emergency Management Act of 1976, and the Governor did not have the authority to exercise emergency powers under the Emergency Powers of the Governor Act of 1945.

24. In *Americans for Prosperity Foundation v. Bonta*, the Court majority ruled that California's disclosure requirement was facially invalid because it burdens donors' First Amendment rights to freedom of association. However, the majority was evenly split as to which standard of scrutiny should apply to such cases. Please explain your understanding of the two major arguments, and which of the two standards an appellate judge is bound to apply?

Response: I understand that there was disagreement in the majority on whether strict scrutiny or exacting scrutiny should apply in this case. If confirmed as a district court judge, I would be bound to follow the precedent as established by the Supreme Court and that of the Sixth Circuit.

Senator Josh Hawley
Questions for the Record

Shalina Kumar
Nominee, U.S. District Judge for the Eastern District of Michigan

1. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

    a. **Do you agree with that philosophy?**

    Response: It is the duty of a judge to follow the law and the precedent as established by the U.S. Supreme Court and the Circuit in which they sit. A judge's personal opinions are not relevant and should not play a role in their decisions.

    b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

    Response: Please see my response to Question 1(a).

2. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

    Response: When interpreting the Constitution, I would start with the plain meaning and express language of the provision at issue. In addition, I would follow Supreme Court precedent with respect to the role of text and original meaning of constitutional provisions when interpreting the Constitution.

3. **Do you consider legislative history when interpreting legal texts?**

    a. **If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?**

    Response: When interpreting legal texts, I start with the plain meaning and express language of the text at issue. In addition, I would follow Supreme Court and Sixth Circuit precedent with respect to the interpretation of the legal text. If there was no precedent directly on point, I would look to analogous precedent interpreting, for example, a different statute that used similar or identical language. If there is ambiguity in the text and there is no precedent on point, I may look to legislative history. Some legislative history that might be persuasive would include language that was changed in a statute and statutes that were enacted in response to a court decision.

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: The U.S. Constitution is a domestic document, and it is, therefore, not appropriate to consult the laws of foreign nations when interpreting provisions of the Constitution.

4. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: As a sitting judge and a judicial nominee, it is not appropriate for me to comment or give an opinion on an appellate court decision. If confirmed, I would follow all Supreme Court and Sixth Circuit precedent.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my response to Question 4(a).

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: As a state court judge for the past fourteen years, I have not encountered this issue. If confirmed, I would follow Supreme Court and Sixth Circuit precedent with respect to this subject.

5. Do you believe America is a systemically racist country?

Response: I understand that there have been some studies conducted on this issue, but I have not researched this subject, nor have I encountered it as a sitting judge.

6. Please describe your understanding of the "federal common law."

Response: It is my understanding that "federal common law" is a limited area of law created by the federal courts absent a controlling federal statute.

7. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: Under current law of the Sixth Circuit, a petitioner must establish that any risk of harm was substantial when compared to a known and available alternative method of execution. They must also establish that the proposed method creates a demonstrated risk of severe pain. *Glossip v. Gross*, 576 U.S. 863 (2015).

8. **Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

Response: In *Gloss*, the Court cited *Baze v. Rees*, 553 U.S. 35 (2008), to stand for the proposition that the Eighth Amendment requires a prisoner to plead and prove a known and available alternative.

9. **Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

Response: In *District Attorney's Office for the Third Judicial Dist. v. Osborne*, 557 U.S. 52 (2009), the Court held that there was no due process right to DNA testing for a habeas petitioner post-conviction. I will faithfully follow the precedent of the Supreme Court and Sixth Circuit.

10. **Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."**

    a. **What do you understand this statement to mean?**

    Response: I am not familiar with the context of Justice Scalia's statement. However, a judge must always follow the law and case precedent regardless of whether they personally agree with the outcome.

11. **U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.**

    a. **Do you believe it is appropriate for courts to issue "unpublished" decisions?**

    Response: As a sitting judge and judicial nominee, it is not appropriate for me to comment on the procedure of appellate courts.

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: Please see my response to Question 11(a).

12. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?

Response. No. If confirmed, I will follow Supreme Court and Sixth Circuit precedent.

13. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Pursuant to Supreme Court precedent, a state governmental action that discriminates against a religious group or religious belief must survive strict scrutiny. Binding precedent on religious rights cases would include, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); *Masterpiece Cakeshop, Ltd. V. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018*); Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246 (2020); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Church of the Lukumi Babalu Aye, Inc. v. City of Haialeah*, 508 U.S. 520 (1993); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). If confirmed, I would follow all Supreme Court and Sixth Circuit precedent.

14. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: In *New Doe Child #1 v. Congress of U.S.*, 891 F.3d 578, 586 (6th Cir. 2018) (citing *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014), the Sixth Circuit held that courts are to "determine whether the line drawn by the plaintiff between conduct consistent and inconsistent with her or his religious beliefs reflects an honest conviction."

15. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation."

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No, I have not issued any opinions adjudicating a Second Amendment or analogous claim.

16. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: As a state court judge for the past fourteen years, I have not encountered this case or issue. My personal opinion of a Supreme Court decision is not relevant. If confirmed, I will follow Supreme Court and Sixth Circuit precedent.

17. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

a. If so, what are they?

Response: As a state court judge for the past fourteen years, I have not had occasion to address Supreme Court decisions that have not been formally overruled but are no longer good law.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: If confirmed, I will faithfully follow Supreme Court and Sixth Circuit precedent.

18. What is the standard for exercising each kind of abstention in the court to which you have been nominated?

Response: Abstention doctrines provide that federal courts may, or in some instances shall, refrain from hearing a case if it may be resolved at the state court level. The Pullman and Younger abstention doctrines are examples of such doctrines.

19. Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?

a. If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.

Response: No.

20. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

a. Do you believe that identical texts should be interpreted identically?

Response: A state constitution may provide more rights to its citizens, but it may not restrict a right afforded to its citizens under the U.S. Constitution. To the extent that a state constitution does not violate federal law, its provisions should be followed.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Please see my response to Question 20(a).

21. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954), was correctly decided?

Response: Generally speaking, it is not appropriate for a judge to give his or her opinion about whether any specific Supreme Court case was correctly decided. However, there are a few examples of decisions that are so widely accepted and not likely to come before me as a judge that they would be exceptions to this general rule. *Brown v. Board of Education* is one such example, and I believe it was correctly decided.

22. Do federal courts have the legal authority to issue nationwide injunctions?

a. If so, what is the source of that authority?

Response: As a state court judge for fourteen years, I have not had occasion to address the issue of nationwide injunctions. It is my understanding that this issue is currently being litigated in the federal court system. I will

faithfully follow Supreme Court and Sixth Circuit precedent with regard to this issue.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Please see my response to Question 22(a).

23. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my response to Question 22(a).

24. What is your understanding of the role of federalism in our constitutional system?

Response: Pursuant to the Tenth Amendment, any right not specifically granted to the federal government is reserved for the states.

25. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my response to Question 18.

26. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: The Supreme Court has held that there are rights that are not specifically enumerated in the Constitution, including the right to marry; the right to have children; the right to marital privacy. The Supreme Court has found 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, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 719-21 (1997) (internal quotations omitted).

27. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: The First Amendment right to free exercise of religion is a fundamental right afforded to all citizens under the U.S. Constitution. I will faithfully follow Supreme Court and Sixth Circuit precedent when presented with cases involving this fundamental right.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: The freedom to worship relates to an individual's right to hold certain beliefs and attend religious services. The free exercise of religion extends beyond the freedom to worship in that it includes the right of an individual to live their lives and make life decisions pursuant to their religious beliefs.

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: If confirmed, I will faithfully follow the Supreme Court and Sixth Circuit precedent. I will also look to the Religious Freedom Restoration Act and other similar laws.

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: Please see my response to Question 27(c).

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The Religious Freedom Restoration Act sets out its relationship and interplay with other federal laws. I will faithfully follow Supreme Court and Sixth Circuit precedent with respect to this issue.

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: Yes, I have issued two opinions that relate to these issues. Please see attached opinions in the appendix.

28. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: A reasonable doubt is a doubt based on reason and common sense. Each individual trier of fact must decide this for himself or herself.

29. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: As a sitting judge and judicial nominee, I do not feel that it is appropriate for me to comment on a Justice's dissenting opinion.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: As a sitting judge and judicial nominee, I do not feel that it is appropriate for me to comment on whether a Supreme Court case was rightly or wrongly decided. I am aware that the Supreme Court's holding in *Lochner* was ultimately called into question by later decisions. *See West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). It is my duty as a judge to follow binding Supreme Court precedent.

30. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (citing *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872 (1990)), the Supreme Court held that "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." If a law is not applied in a neutral or generally applicable manner, it must survive strict scrutiny. *See also Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

31. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

Response: As a judicial nominee, I do not feel that it would be appropriate for me to comment on this issue as it is possible it could come before me if I am confirmed.

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

Response: Please see my response to Question 31(a).

c. If you disagree with either of these statements, please explain why and provide examples.

Response: Please see my response to Question 31(a).

c. If confirmed, would you treat unpublished decisions as precedential?

Response: Unpublished decisions do not have precedential value, but they can sometimes be instructive or persuasive.

d. If not, how is this consistent with the rule of law?

Response: Please see my response to Question 31(c). Additionally, I do not believe that is inconsistent with the rule of law.

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: Please see my response to Question 31(c).

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: If confirmed, I would research the Federal Court Rules and discuss with my colleagues and law clerks how to approach this issue.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: Please see my response to Question 31(f).

32. In your legal career:

a. How many cases have you tried as first chair?

Response: I have tried approximately 10 cases, 3 as sole counsel and 7 as associate counsel, most of those being co-counsel.

b. How many have you tried as second chair?

Response: Please see my response to Question 32(a).

c. How many depositions have you taken?

Response: I do not have an exact number, but I took and defended many depositions during my ten years of litigation experience.

d. How many depositions have you defended?

Response: Please see my response to Question 32(c).

e. How many cases have you argued before a federal appellate court?

Response: As a state court judge for the past fourteen years, I have not practiced law as an attorney. Prior to that, I did not practice before the federal appellate courts.

f. How many cases have you argued before a state appellate court?

Response: As a state court judge for the past fourteen years, I have not practiced law as an attorney. Prior to that, I appeared before a state appellate court two or three times.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: To the best of my recollection, I did not appear before a federal agency as a practicing attorney.

h. How many dispositive motions have you argued before trial courts?

Response: Prior to taking the bench, I argued numerous dispositive motions before multiple trial courts.

i. How many evidentiary motions have you argued before trial courts?

Response: Prior to taking the bench, I argued numerous evidentiary motions before multiple trial courts.

33. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

Response: As a state court judge for the past fourteen years, I have not been a practicing attorney with billable hours. During my ten years as an attorney, I spent less than one year as an attorney with billable hours, and I have no recollection of my hours billed during that time.

b. What portion of these were dedicated to pro bono work?

Response: I have no record of this information.

34. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I believe Justice Roberts was referring to the role of a judge as applying the laws, not creating them.

b. Do you agree or disagree with this statement?

Response: Yes.

35. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I am not familiar with this quote or the context.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: Please see my response to Question 35(a).

36. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: I cannot provide a response to this question in the abstract without a specific set of facts and circumstances in front of me.

37. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

a. If yes, please provide appropriate citations.

Response: I do not believe so.

38. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: No.

39. What were the last three books you read?

Response: A biography on Queen Elizabeth the 1st, *The Second Mountain*, and *My Life*, Isadora Duncan.

40. What case or legal representation are you most proud of?

Response: I represented a widow whose 34-year-old husband died from an undiagnosed heart condition. I developed a very close bond with my client and was very proud to have served her.

41. Have you ever taken a position in litigation that conflicted with your personal views?

a. How did you handle the situation?

Response: Not that I can recall.

b. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

42. What three law professors' works do you read most often?

Response: There are no law professors whose work I typically read. When faced with a case or issue, I research the relevant law and case precedent.

43. Which of the Federalist Papers has most shaped your views of the law?

Response: There are no Federalist Papers that have significantly shaped my view of the law.

44. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: I am sure that there have been such documents that have changed my mind on a certain case or issue, but I have no specific recollection of one.

45. Do you believe that an unborn child is a human being?

Response: My personal belief on this issue is not relevant and would not play a role in my decision-making if I am confirmed. I will faithfully follow the precedent of the Supreme Court and the Sixth Circuit.

46. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: I believe the only time I have testified under oath was as a defendant in an automobile negligence action. *Jessica LaRiche, by and through Sheryl LaRiche Next Friend v. Shalina Kumar*, Oakland County Circuit Court Case No. 1996-527239-NI.

47. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade*, 410 U.S. 113 (1973)?

Response: No.

b. The Supreme Court's substantive due process precedents?

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

48. Do you currently hold any shares in the following companies:

a. Apple?

Response: The only investments I have are through my employment 401k and a Roth IRA. I do not manage those investments and do not currently know what investments are included.

b. Amazon?

Response: Please see my response to Question 48(a).

c. Google?

Response: Please see my response to Question 48(a).

d. Facebook?

Response: Please see my response to Question 48(a).

e. Twitter?

Response: Please see my response to Question 48(a).

49. Have you ever authored or edited a brief that was filed in court without your name on the brief?

a. If so, please identify those cases with appropriate citation.

Response: No.

50. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: No.

51. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: Nominees take an oath to swear to tell the truth and must abide by that oath.

Appendix

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SANFORD N. LAKIN and CECILIA J. LAKIN,

Plaintiffs,

Case No. 14-138683-NO
Hon. Shalina D. Kumar

v.

SR. BARBARA RUND, MSGR. ANTHONY TOCCO, and ST. HUGO OF THE HILLS CATHOLIC CHURCH,

Defendants.
_____/

OPINION AND ORDER

At a session of said Court held in the Courthouse, City of Pontiac, Oakland County, Michigan, on _____

PRESENT: THE HON. SHALINA D. KUMAR, CIRCUIT COURT JUDGE

This matter is before the Court on Defendants Sister Barbara Rund ("Sr. Barbara"), Monsignor Anthony Tocco ("Msgr. Tocco"), and St. Hugo of the Hills Catholic Church's ("St. Hugo's") (collectively, "Defendants'") "Motion for Summary Disposition" ("Motion") as to Plaintiffs Sanford N. Lakin ("Mr. Lakin") and Cecelia J. Lakin's ("Mrs. Lakin's") (collectively, "Plaintiffs'") Complaint. On April 23, 2014, the Court held a hearing regarding Defendants' Motion and took the matter under advisement.[1]

[1] The parties engaged in settlement discussions after the hearing was held.

I. Facts

On Sunday, July 21, 2013, Mr. Lakin was asked to substitute in a religious service at St. Hugo in place of an assigned Lector who failed to appear on time.[2] When the procession line was ready to move forward for the service, the Lector who arrived late approached Mr. Lakin and stated that Sr. Barbara authorized the Lector to take his position. After the service, Mr. Lakin and Sr. Barbara engaged in a discussion in the St. Hugo Gathering Space, which is a public area adjacent to the St. Hugo sanctuary. During that conversation, Mr. Lakin asked Sr. Barbara why she had authorized the tardy Lector to assume his place in the worship procession contrary to St. Hugo's established rules. Sr. Barbara told Mr. Lakin that she could do so because "it was [her] committee" and later stated to Mr. Lakin "You don't like me!" After this discussion, Sr. Barbara left for a vacation.

The following day, on July 22, 2013, Mr. Lakin asked Msgr. Tocco to schedule a meeting to discuss Sr. Barbara's attitude.[3] Msgr. Tocco stated that he would talk to Sr. Barbara when she returned from vacation. On Thursday, August 15, 2013, at 10:49pm, Mr. Lakin sent an email to Msgr. Tocco asking when he would set a date for the meeting. Msgr. Tocco responded via email, stating:

> I do not want to be in the middle of this but Sr. Barb is afraid of you....She says you put a finger in her chest and she does not want to deal with it....(S)he is one of my most trusted advisors. Work with her or let it go. Do not put me in the middle. You and Cia [Mrs. Lakin] have had your problems with her but she is, from my point of view, a valuable asset to my staff at St. Hugo's.

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[2] Mr. Lakin is a member of St. Hugo. He also is a graduate of the Sacred Heart Major Seminary and serves as a Lector.

[3] Msgr. Tocco is the pastor of St. Hugo.

Msgr. Tocco sent another email to Mr. Lakin on August 16, 2013, at 10:52pm, stating "She does not like you...I like her a lot." On August 16, 2013, at 11:56pm, Mr. Lakin responded by email, stating:

> I NEVER TOUCHED HER, LET ALONE PUT A FINGER IN (OR ON) HER CHEST. THIS IS A LIE. You have recognized that I am a good lawyer. Do you think I would be foolish enough to touch the nun, let alone 'put a finger in her chest?' Her statement as you related it accuses me of a battery – a criminal offense. You can advise her that I demand a retraction of that statement. It is a slanderous remark for which she could be held accountable in a civil law suit. The parish could be responsible for her wrongful conduct.

As Msgr. Tocco did not want to get involved in the matter, Mr. Lakin suggested that a mutual friend, Father Jack Baker ("Fr. Jack"), act as an "arbitrator" between Sr. Barbara and Mr. Lakin. However, Msgr. Tocco did not respond to Mr. Lakin's suggestion or investigate the matter. Msgr. Tocco also did not offer, request, or agree to meet with Mr. Lakin regarding the matter.

On September 23, 2013, Mrs. Lakin learned from David Enos ("Mr. Enos"), her close friend and a St. Hugo employee, that Sr. Barbara had republished her slander to Mr. Enos and John Sittard ("Mr. Sittard"), the St. Hugo music director. That evening, Mr. Lakin called Fr. Jack and asked him to contact Msgr. Tocco to urge him to immediately instruct Sr. Barbara to cease spreading her slanderous remarks. Later that evening, Fr. Jack told Mr. Lakin that Fr. Jack had called Msgr. Tocco. However, Msgr. Tocco refused to listen to Fr. Jack. Msgr. Tocco also did not respond to Mrs. Lakin's text message wherein she asked Msgr. Tocco to contact Mr. Lakin.[4]

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[4] Plaintiffs allege that Msgr. Tocco's refusal to supervise or control Sr. Barbara's republication of her slanderous remark to St. Hugo employees, parishioners, and others was motivated by the perception that Msgr. Tocco formed of Mr. Lakin as a result of Sr. Barbara's statement.

The next day, on September 24, 2013, Mr. Lakin prepared and sent to Msgr. Tocco a "Demand for Retraction of Defamatory Statement." On October 1, 2013, Mr. Lakin learned that Msgr. Tocco had republished Sr. Barbara's slander to Paul Nine ("Mr. Nine") and Sue Nine ("Mrs. Nine").[5] On October 18, 2013, Mr. Lakin received Defense counsel's letter stating that Sr. Barbara would not retract her statement. On February 4, 2014, Plaintiffs filed their Complaint in this Court. Plaintiffs' Complaint contains three counts: Defamation of Sanford N. Lakin (Count I); Intentional Tort as to Cecilia J. Lakin (Against Sr. Barbara and St. Hugo) (Count II); and Damage to Consortium (Count III).

II. Standard of Review

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint.[6] All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-movant.[7] A motion under MCR 2.116(C)(8) may be granted where the claims alleged are clearly unenforceable as a matter of law and no factual development could justify recovery.[8] When deciding a motion brought under this section, a court considers only the pleadings.[9]

III. Discussion

A. Defamation Per Se (Count I)

"The [C]ourt may determine, as a matter of law, whether the words in question, alleged by [the] plaintiff to be defamatory, are capable of defamatory meaning. Where the words are, as

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[5] Mr. Nine is Msgr. Tocco's attorney and Mrs. Nine is the office manager for Mr. Nine's law office. Plaintiffs allege, however, that prior to the instant litigation, Mr. and Mrs. Nine were frequent social guests and traveling companions with Msgr. Tocco. Plaintiffs also contend that Msgr. Tocco initially passed on Sr. Barbara's slander to Mr. and Mrs. Nine during a social occasion.

[6] *Maiden v Rozwood*, 461 Mich 109 (1999).

[7] *Wade v Dep't of Corrections*, 439 Mich 158, 162 (1992).

[8] *Id* at 163.

[9] MCR 2.116(G)(5).

a matter of law, not capable of carrying a defamatory meaning, summary judgment . . . is appropriate." Sawabini v Desenberg, 143 Mich App 373, 379 (1985) (citations omitted). "A communication is defamatory if it tends to lower an individual's reputation in the community or deters third persons from associating or dealing with that individual." *New Franklin Enters v Sabo*, 192 Mich App 219, 221 (1991); *see also Ireland v Edwards*, 230 Mich App 607, 614 (1998). To recover, the plaintiff must show:

> (a) a false and defamatory statement concerning plaintiff; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication (defamation per quod).

New Franklin Enters, 192 Mich App at 221.[10] "Words are defamatory per se if they, 'by themselves, and as such, without reference to extrinsic proof, injure the reputation of the person to whom they are applied.'" *Id.* "Whether nominal or substantial, where there is defamation per se, the presumption of general damages is well settled." *Id* (citation omitted).

In their Complaint, Plaintiffs allege that Sr. Barbara's statement that Mr. Lakin "put a finger in [Sr. Barbara's] chest" imputes the commission of a criminal offense, which constitutes defamation per se. However, in their Motion, Defendants contend that Sr. Barbara did not state that Mr. Lakin committed a battery or willfully touched her. Therefore, Defendants state that a criminal accusation cannot necessarily be inferred from Sr. Barbara's statement. Moreover, Defendants contend that even if Plaintiffs could establish that putting a finger in someone's chest amounts to a criminal battery, such an accusation would be – at worst – a minor criminal offense for which there is no societal stigma.

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[10] "Michigan law distinguishes between defamation per se whereby a defamatory statement is actionable 'irrespective of special harm' and defamation per quod, which involves 'the existence of special harm caused by publication.'" *Yono v Carlson*, 283 Mich App 567, 571 (2009) (citation omitted).

"At common law, words charging the commission of a crime are defamatory per se, and hence, injury to the reputation of the person defamed is presumed to the extent that the failure to prove damages is not a ground for dismissal." *Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 727-728 (2000). Under Michigan law, "[a] battery, or assault and battery, is the wilful touching of the person of another by the aggressor or by some substance put in motion by him; or, as it is sometimes expressed, a battery is the consummation of the assault." *Tinkler v Richter*, 295 Mich 396, 401 (1940); *see also Smith v Stolberg*, 231 Mich App 256, 260 (1998) (holding that battery is "the wilful and harmful or offensive touching of another person which results from an act intended to cause such contact") (citation omitted). In addition, MCL 750.81 provides that "a person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both." MCL 750.81.

Pursuant to MCR 2.116(C)(8), the Court must accept all well-pleaded factual allegations in Plaintiffs' Complaint as true and construe them in a light most favorable to Plaintiffs. In their Complaint, Plaintiffs assert that Sr. Barbara stated that Mr. Lakin "put a finger in [Sr. Barbara's] chest." The Merriam-Webster Dictionary provides that synonyms for "put" include "deposit," "emplace," "set," and "stick." Therefore, by stating that Mr. Lakin "put a finger" in her chest, Sr. Barbara is asserting that Mr. Lakin willfully and offensively touched Sr. Barbara by intentionally making contact with her chest, which is a crime. *See Smith, supra*; *see also* MCL 750.5 (stating in part that "'Crime' means an act or omission forbidden by law which is not designated as a civil infraction, and which is punishable upon conviction by . . . [i]mprisonment [or a] [f]ine not designated a civil fine."). As Sr. Barbara's statement describes a battery committed by Mr. Lakin, Plaintiffs have pled a claim of defamation per se. *See* MCR 2.116(C)(8).[11]

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[11] Defendants also contend that Plaintiffs' lawsuit is barred by the ecclesiastical abstention doctrine. "Under the ecclesiastical abstention doctrine, . . . civil courts may not redetermine the correctness of an interpretation of canonical text or some decision

1. The Common Interest Qualified Immunity Privilege

In their Motion, Defendants argue that the communications by Sr. Barbara to Msgr. Tocco and Mr. Enos are subject to the common interest qualified immunity privilege. "[A] qualified privilege extends to all communications made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, to a person having a corresponding interest or duty and embraces cases where the duty is not a legal one but is of a moral or social character of imperfect obligation." *Hall v Pizza Hut of America, Inc*, 153 Mich App 609, 619 (1986).

However, there is no common interest qualified immunity privilege where a defendant acted with malice. *See Dadd v Mount Hope Church & Int'l Outreach Ministries*, 486 Mich 857 (2010) (holding that the finding of malice negates the qualified privilege that may have existed in the context of the plaintiff's claims for libel and slander). In Paragraph 21 of their Complaint, Plaintiffs include the text from Mr. Lakin's email to Msgr. Tocco wherein Mr. Lakin states: "I NEVER TOUCHED HER, LET ALONE PUT A FINGER IN (OR ON) HER CHEST. THIS IS A LIE." Pursuant to MCR 2.116(C)(8), the Court must accept Plaintiffs' allegation that Sr. Barbara lied regarding Plaintiffs' actions as true. Therefore, viewing Plaintiffs' allegation in a light most favorable to Plaintiffs, Plaintiffs have alleged that Sr. Barbara acted with malice. *See Feyz v Mercy Mem'l Hosp*, 475 Mich 663, 693 (2006) (noting that Black's Law Dictionary (7th ed) defines actual malice in the context of defamation as "[k]nowledge (by the person who utters or publishes

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relating to government of the religious polity." *Smith v Calvary Christian Church*, 462 Mich 679, 684 (2000) (citation omitted). "Religious doctrine refers to rituals, liturgies of worship, and tenets of the faith. Polity refers to the organization and form of government of the church." *Sikh Soc'y of Mich, Inc v Singh*, 2004 Mich App LEXIS 537, *2-3 (Mich Ct App February 19, 2004). In the instant case, the parties have not argued that the substance of Defendants' alleged defamation is governed by religious doctrine. Therefore, Plaintiffs' defamation per se claim does not require an inquiry into matters of religious doctrine or polity. *See id.* Accordingly, the ecclesiastical abstention doctrine does not bar Plaintiffs' lawsuit.

a defamatory statement) that a statement is false, or reckless disregard about whether the statement is true").[12] Accordingly, Sr. Barbara's claim that her statement is protected by the common interest qualified immunity privilege fails.

2. Msgr. Tocco's Republication of Sr. Barbara's Statement

In their Motion, Defendants contend that Plaintiffs' defamation claim fails as to Msgr. Tocco because Plaintiffs have not alleged that Msgr. Tocco republished Sr. Barbara's statement to a non-privileged third party, namely anyone other than Mr. Lakin and Msgr. Tocco's attorney. Indeed, in their Complaint, Plaintiffs state only that it is believed that, in the course of discovery, others (in addition to Mr. and Mrs. Nine) to whom Msgr. Tocco republished Sr. Barbara's slander will be revealed. However, Plaintiffs have not identified other individuals to whom Msgr. Tocco republished the slander besides his counsel, his counsel's law office manager, and Mr. Lakin. Importantly, Msgr. Tocco's communications to his counsel and his counsel's law office manager fall within the purview of the attorney-client privilege and are not actionable.[13] In addition, Msgr. Tocco's republication of Sr. Barbara's statement to Mr. Lakin is not actionable. *See Hernden v Consumers Power Co*, 72 Mich App 349, 356 (1976) (holding that "[s]ummary judgment was correctly granted. . . Plaintiff failed to allege . . . that there even was a publication to anyone other

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[12] Plaintiffs also contend that Sr. Barbara's communication to Mr. Enos is not protected by the common interest qualified immunity privilege because Mr. Enos has no administrative responsibilities at St. Hugo. *See Sias v General Motors Corp*, 372 Mich 542, 548 (1964) (holding that "in calling in fellow employees of [the] plaintiff and 'explaining' the circumstances of his separation, defendant corporation was serving its own particular interest. . .These men were not supervisors, personnel department representatives, or company officials. They were simply fellow employees in the identical work. No privilege extended to the communication to them and the trial court properly so held.").

[13] "[A]n absolutely privileged statement cannot be actionable. An absolutely privileged communication is one for which no remedy is provided for damages in a defamation action because of the occasion on which the communication is made. . . If a statement is absolutely privileged, it is not actionable even if it was false and maliciously published." *Vc, Inc v Kraft Foods Global*, 2013 Mich App LEXIS 2207, *7 (Mich Ct App December 26, 2013) (citations omitted).

than the plaintiff himself. Plaintiff's allegations thus failed to state a cause of action for libel."). Accordingly, the Court dismisses with prejudice Plaintiffs' defamation claim as to Msgr. Tocco based on Msgr. Tocco's republication of the slander to Mr. Lakin, Mr. Nine, and Mrs. Nine. *See* MCR 2.116(C)(8). However, the Court dismisses without prejudice Plaintiffs' defamation claim as to other incidents where Msgr. Tocco republished the slander that may be revealed in the course of discovery.[14]

B. Intentional Infliction of Emotional Distress (Count II)

Michigan law recognizes the tort of intentional infliction of emotional distress as a distinct and separate cause of action. *Campos v General Motors Corp*, 71 Mich App 23, 25 (1976). However, "[l]iability has been found [for intentional infliction of emotional distress] only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Ledsinger v Burmeister*, 114 Mich App 12, 18 (1982). "Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" *Id.*

Defendants maintain that Plaintiffs' allegations fall short of "outrageous conduct." The Court agrees. Importantly, "[t]he liability [for the intentional infliction of emotional distress] clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Id* (citation omitted). Here, Plaintiffs have pled that Defendants are liable for defamation. However, Plaintiffs have not pled facts that constitute conduct so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. *See id.* Accordingly, the

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[14] If additional incidents are borne out through discovery, Plaintiffs may reassert their defamation claim as to Msgr. Tocco.

Court grants Defendants' Motion as to Plaintiffs' intentional infliction of emotional distress claim. *See* MCR 2.116(C)(8).

C. Damage to Consortium (Count III)

In their Motion, Defendants describe Count III of Plaintiffs' Complaint as relating solely to Plaintiffs' intentional infliction of emotional distress claim. However, in Count III of Plaintiffs' Complaint, Plaintiffs contend that as a result of Defendants' intentional acts and negligence alleged in Counts I and II of Plaintiffs' Complaint, Mrs. Lakin has suffered and continues to suffer a loss of and injury to her previously enjoyed degree of companionship, services, affection, and consortium. In light of the Court's rulings as to Counts I and II of Plaintiffs' Complaint, the Court grants Defendants' Motion as to Count III of Plaintiffs' Complaint with respect to Plaintiffs' intentional infliction of emotional distress claim and Plaintiffs' defamation claim as to Msgr. Tocco. However, the Court denies Defendants' Motion as to Count III of Plaintiffs' Complaint with respect to Plaintiffs' defamation claim as to Sr. Barbara and St. Hugo.

WHEREFORE IT IS HEREBY ORDERED that Defendants' "Motion for Summary Disposition" is **GRANTED IN PART** and **DENIED IN PART**. Defendants' Motion is granted as to Count I of Plaintiffs' Complaint with respect to Msgr. Tocco. Defendants' Motion is also granted as to Count II of Plaintiffs' Complaint. In addition, Defendants' Motion is granted as to Count III of Plaintiffs' Complaint with respect to Plaintiffs' intentional infliction of emotional distress claim and Plaintiffs' defamation claim as to Msgr. Tocco.

Defendants' Motion is denied as to Count I of Plaintiffs' Complaint with respect to Sr. Barbara and St. Hugo. Defendants' Motion is also denied as to Count III of Plaintiffs' Complaint with respect to Plaintiffs' defamation claim as to Sr. Barbara and St. Hugo.

IT IS FURTHER ORDERED that Plaintiffs' defamation claim as to Msgr. Tocco's republication of Sr. Barbara's statement to Mr. Lakin, Mr. Nine, and Mrs. Nine is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiffs' defamation claim as to Msgr. Tocco's republication of Sr. Barbara's statement to other individuals that may be revealed in the course of discovery is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the parties shall appear for a Status Conference on September 8, 2014 at 8:30am.

IT IS SO ORDERED.

THIS ORDER DOES NOT RESOLVE THE LAST PENDING CLAIM IN THIS MATTER AND DOES NOT CLOSE THE CASE.

Dated: _____

_____
Hon. Shalina D. Kumar

Proof of Service

I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by **EFILING** it to their addresses as disclosed by the pleadings of record on the ___ day of August, 2014.

/s/ Amanda Lombardo

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Ruvayn Rubinstein, et al.,

Plaintiffs,

Case No. 15-149593-CZ

v

Hon. Shalina Kumar

Temple Israel,

Defendant.
_____/

OPINION AND ORDER
At a session of Court
Held in Pontiac, Michigan
On

_____

PRESENT: THE HONORABLE SHALINA D. KUMAR, CIRCUIT JUDGE

This matter is before the Court on Defendant "Temple Israel's Motion for Summary Disposition on Remand Pursuant to MCR 2.116(C)(10)" ("Defendant's Motion") and on "Plaintiffs' Motion for Summary Disposition on Remand" under MCR 2.116(C)(10) ("Plaintiffs' Motion"). Upon review of the parties' motions and briefs, this Court dispensed with oral argument under MCR 2.119(E)(3). This Court now finds as follows.

I. FACTS

A. Background

Defendant is a private, religious institution that also operates a preschool. Defendant is licensed to do business by the State of Michigan. The State of Michigan requires children to receive certain vaccinations unless they are exempt under MCL 333.9215, which provides:

> (1) A child is exempt from the requirements of this part as to a specific immunization for any period of time as to which a physician certifies that a specific immunization is or may be detrimental to the child's health or is not appropriate.
>
> (2) A child is exempt from this part if a parent, guardian, or person in loco parentis of the child presents a written statement to the administrator of the child's school or operator of the group program to the effect that the requirements of this part cannot be met because of religious convictions or other objection to immunization.

Plaintiffs enrolled their minor children at Defendant's preschool in 2014, but when Plaintiffs attempted to re-enroll their children for the 2015 school year, Defendant informed them that their children would not be enrolled because they were not fully vaccinated. In accordance with Michigan law, Plaintiffs presented Defendant with an exemption form to refrain from vaccinating their children based on their religious beliefs. Defendant, however, informed Plaintiffs that, for its own religious reasons, it was no longer recognizing non-medical exemptions to Michigan's vaccine requirements.

B. Prior Proceedings

Plaintiff filed this action against Defendant for violation of Michigan statutes and regulations requiring Defendant to recognize non-medical vaccine waivers (Count I) and violation of Plaintiffs' constitutional rights (Count II).

1. Federal court action

Defendant removed this action to federal court, where it was assigned to the Hon. John Corbett O'Meara in the United States District Court for the Eastern District of Michigan, Case No. 15-13969. Judge O'Meara issued an "Order of Partial Remand," in which he declined to exercise supplemental jurisdiction over Plaintiffs' state law claims and ordered "that Count I and all portions of Count II that do not allege a federal cause of action are **REMANDED** to the Circuit Court for the County of Oakland." The parties filed cross motions for summary judgment regarding

Plaintiffs' federal law claims, and, on July 19, 2016, Judge O'Meara issued an "Opinion and Order Denying Plaintiffs' Motion for Summary Judgment and Granting Defendant's Motion for Summary Disposition." Judge O'Meara held that Defendant was not a state actor and, therefore, could not be liable for any alleged constitutional violations under 42 USC § 1983. Judge O'Meara further stated:

> Even if the court were to deem Defendant a state actor, Temple Israel is entitled to summary judgment under the Ecclesiastical Abstention Doctrine. The doctrine prohibits a court from resolving a dispute that is inherently religious in nature. The gravamen of Plaintiffs' complaint is that Defendant refuses to make an exception to its vaccination policy based on Plaintiffs' religious beliefs, which are in direct conflict with those of this private, religious school. Under this doctrine the court would abstain from hearing the parties' dispute.

2. State court action

Upon remand, Defendant filed its "Answer to Complaint and Special and Affirmative Defenses" in this action. Defendant asserted an affirmative defense based on its own constitutional right to freely practice its religious beliefs:

> Plaintiffs' claims to compel Temple Israel to accept Plaintiffs' immunization waivers under the Michigan Public Health Code or the Child Care Licensing Act are barred because Temple Israel as a private religious institution has a First Amendment right to determine the policies governing the admission or expulsion of students based on conformity with its religious beliefs and/or religious tenets. To compel Temple Israel to admit students with religious or philosophical based immunization waivers would violate Temple Israel's First Amendment Free Exercise rights to admit or expel students based upon conformity with its religious beliefs.

Following the federal court's opinion and order regarding the parties' cross motions for summary judgment, the parties filed cross motions for summary disposition before this Court. Plaintiffs moved under MCR 2.116(C)(9) and (C)(10), while Defendant moved under MCR

2.116(C)(10). Neither party nor the Court challenged this Court's subject matter jurisdiction to consider Plaintiffs' claims in this action. The Court heard oral argument on the motions on September 14, 2016. At the hearing, this Court referenced Judge O'Meara's finding that this dispute is religious in nature and that the Ecclesiastical Abstention Doctrine would apply. This Court held:

> [T]o this Court it certainly is instructive. And I happen to agree with him. I do find that … this dispute is religious in nature. Uhm, I do find this a dispute between a religious institution and its member, and I think, therefore, the ecclesiastical doc – abstention doctrine does apply, and I'm granting defendant's summary disposition motion.

This Court then entered an "Order Granting Defendant, Temple Israel's Motion for Summary Disposition Pursuant to MCR 2.116(C)(10) and Denying Plaintiffs' Ruvayn Rubinstein and Sara Rubinstein [sic] Motion for Summary Disposition Pursuant to MCR 2.116(C)(10)."

3. The Court of Appeals' decision

Plaintiffs appealed by right this Court's order granting summary disposition in favor of Defendant. The Court of Appeals vacated this Court's order and remanded for further proceedings in light of *Winkler v Marist Fathers of Detroit, Inc*, 500 Mich 327; 901 NW2d 566 (2017), which was decided after this Court issued its September 14, 2016 order.

Winkler addressed the Ecclesiastical Abstention Doctrine, stating:

> The ecclesiastical abstention doctrine arises from the Religion Clauses of the First Amendment of the United States Constitution and reflects this Court's longstanding recognition that it would be inconsistent with complete and untrammeled religious liberty for civil courts to enter into a consideration of church doctrine or church discipline, to inquire into the regularity of the proceedings of church tribunals having cognizance of such matters, or to determine whether a resolution was passed in accordance with the canon law of the church, except insofar as it may be necessary to do so, in determining whether or not it was the church that acted therein. Accordingly, we have consistently held that the court may not

> substitute its opinion in lieu of that of the authorized tribunals of the church in ecclesiastical matters, and that judicial interference in the purely ecclesiastical affairs of religious organizations is improper.
>
> The doctrine thus operates to ensure that, in adjudicating a particular case, a civil court does not infringe the religious freedoms and protections guaranteed under the First Amendment. It does not, however, purport to deprive civil courts of the right to exercise judicial power over any given class of cases.

Winkler, 901 NW2d at 573-574 (internal citations and quotations omitted). *Winkler* held that the Ecclesiastical Abstention Doctrine may affect how a civil court exercises its subject matter jurisdiction over a given claim, but it does not divest a court of jurisdiction altogether. *Id.* at 569.

> What matters instead is whether the actual adjudication of a particular legal claim would require the resolution of ecclesiastical questions; if so, the court must abstain from resolving those questions itself, defer to the religious entity's resolution of such questions, and adjudicate the claim accordingly. The doctrine, in short, requires a case-specific inquiry that informs how a court must adjudicate certain claims within its subject matter jurisdiction; it does not determine whether the court has such jurisdiction in the first place.

Id. at 575. To the extent that prior decisions, such as *Dlaikan v Roodbeen*, 2016 Mich App 591; 522 NW2d 719 (1994), held that the Ecclesiastical Abstention Doctrine deprives a court of subject matter jurisdiction, *Winkler* overruled them.

Following *Winkler*, the Court of Appeals remanded this action to this Court for further proceedings, stating:

> In this case (and unlike in *Winkler*), the trial court did not explicitly state that its ruling was premised on subject-matter jurisdiction or that it was granting summary disposition under MCR 2.116(C)(4). Nonetheless, at the time the trial court ruled, it was bound to follow the now-overruled holding of *Dlaikan* and its progeny (i.e., that the ecclesiastical abstention doctrine implicated subject-matter jurisdiction). See MCR 7.215(C)(2). We therefore conclude that we must remand this case to the trial court to consider the merits of the parties' cross-motions for summary disposition. In light of *Winkler*, the trial court should have the opportunity, in exercising its

> jurisdiction, to adjudicate the merits of those motions while abstaining from resolving any ecclesiastical questions.

After conducting additional discovery, the parties filed cross motions for summary disposition in light of *Winkler*. Upon review of the motions and the briefs, this Court waived oral argument and now issues this "Opinion and Order."

II. STANDARD OF REVIEW

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The Court should evaluate the motion by considering the substantively admissible evidence (pleadings, affidavits, depositions, admissions and other documentary evidence) actually proffered in opposition to the motion to determine if there are disputed issues of material fact for trial. *Id.*; *see also* MCR 2.116(G)(5). Summary disposition is proper "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). No material fact exists for trial if, in reviewing the record evidence, reasonable minds could not return a verdict in favor of the non-movant. *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994). The Court shall review the submitted evidence in a light most favorable to the non-moving party, and grant the benefit of any reasonable doubt to that party. *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). However, a litigant's pledge to later establish an issue of fact at trial is insufficient to survive summary disposition under MCR 2.116(C)(10). *Maiden*, 461 Mich at 121.

III. ANALYSIS

Under *Winkler*, *supra*, this Court hereby exercises subject matter jurisdiction over Plaintiffs' claims in this action. Having considered the merits of the parties' cross motions for summary disposition, this Court finds that adjudicating Plaintiffs' claims would require the resolution of ecclesiastical questions. This Court abstains from resolving such ecclesiastical questions and defers to Defendant's resolution of those questions.

On the one hand, Plaintiffs contend that Defendant should be compelled to accept Plaintiffs' vaccination exemption forms based on Plaintiffs' religious beliefs and compelled to enroll Plaintiffs' children in Defendant's preschool in accordance with Michigan's vaccination laws. Plaintiffs, therefore, contend that resolution of their claims merely requires this Court to apply secular Michigan law.[15] Defendant, on the other hand, contends that it should not be compelled to accept Plaintiffs' vaccination exemption forms or compelled to enroll Plaintiffs' children in Defendant's preschool when Defendant has religious reasons for mandating vaccinations. Defendant, therefore, contends that resolution of Plaintiffs' claims requires resolution of ecclesiastical questions. Defendant contends that, if the Court were to compel Defendant to accept Plaintiffs' vaccination exemption forms, it would be forcing Defendant to operate its private, religious preschool in violation of its own religious beliefs.

Defendant presented ample evidence showing that in Jewish law the preservation of human life overrides virtually any other religious consideration. Specifically, Defendant presented evidence that the Union for Reform Judaism issued a religious ruling on immunization waiver claims, which urged congregations and institutions to adopt polices requiring mandatory vaccinations with only medical exemptions permitted. Thus, unlike in *Winkler*, here Defendant

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[15] Notably, however, while Plaintiffs contend that they are merely seeking secular relief, they also contend that Defendant's refusal to enroll Plaintiffs' children in preschool because they are not fully vaccinated is a violation of Plaintiffs' constitutional right to freely exercise their religious beliefs.

has shown religious reasons for requiring vaccinations and for refusing to enroll Plaintiffs' children in its preschool.

Despite Plaintiffs' contention to the contrary, both parties in this action rely on their religious beliefs either in support of or against vaccinations. Plaintiffs essentially ask this Court to apply Michigan statutes to support their religious beliefs at the expense of Defendant's religious beliefs. This Court, therefore, finds that this action involves a private religious dispute. Just as Judge O'Meara held, this Court finds that "[t]he gravamen of Plaintiffs' complaint is that Defendant refuses to make an exception to its vaccination policy based on Plaintiffs' religious beliefs, which are in direct conflict with those of this private, religious school."

Thus, this Court finds that adjudication of Plaintiffs' claims for violation of Michigan statutes and regulations requiring Defendant to recognize non-medical vaccine waivers (Count I) and violation of Plaintiffs' state constitutional rights (Count II) would require the resolution of ecclesiastical questions. This Court, therefore, abstains from resolving those ecclesiastical questions, defers to Defendant's resolution of such questions, and dismisses this action with prejudice. *Winkler*, 901 NW2d at 575.

Because this Court finds that the Ecclesiastical Abstention Doctrine applies, it need not address Defendant's contention that Plaintiffs lack standing to enforce Michigan statutes in a private cause of action.

WHEREFORE, IT IS HEREBY ORDERED that Defendant "Temple Israel's Motion for Summary Disposition on Remand Pursuant to MCR 2.116(C)(10)" is **GRANTED** and "Plaintiffs' Motion for Summary Disposition on Remand" is **DENIED**. Plaintiffs' claims are dismissed with prejudice.

IT IS SO ORDERED.

THIS ORDER RESOLVES THE LAST PENDING CLAIM IN THIS MATTER AND CLOSES THE CASE.

Dated: _____

_____
Hon. Shalina Kumar, Circuit Judge

Proof of Service

I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by **EFILING** it to their addresses as disclosed by the pleadings of record on the ___ day of September 2018.

/s/ Amanda Lombardo

Questions for the Record for Judge Shalina Kumar
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
Shalina D. Kumar, Nominee to the United States District Court for the Eastern District of Michigan

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

   Response: I believe it is the duty of a judge to uphold the Constitution and the laws of our country. A judge should look to the plain meaning and express language of statutes and provisions of the Constitution. A judge is bound to follow case precedent as established by the Supreme Court and the Circuit in which they sit, and to apply the law to the facts of the case in a fair and impartial manner.

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

   Response: I would first look to the plain meaning and express language of the statute. If the statute is unambiguous, the inquiry would stop there. If there is ambiguity, I would look to precedent as established by the Supreme Court and the Sixth Circuit. If there was no binding precedent directly on point, I would look to precedent not directly on point, but which has reasoning that is analogous. I may look to other statutes with similar language and any precedent interpreting that statute. If I am fortunate enough to be confirmed as a district court judge, I would follow Supreme Court precedent with respect to analyzing and interpreting any federal statute.

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

   Response: I would first look to the plain meaning and express language of the constitutional provision. If the constitutional provision is unambiguous, the inquiry would stop there. If there is ambiguity, I would look to precedent as established by the Supreme Court and the Sixth Circuit. If there was no binding precedent directly on point, I would look to precedent not directly on point, but which has reasoning that is analogous. I may look to other provisions of the Constitution with similar language and any precedent interpreting that language. If I am fortunate enough to be confirmed as a district court judge, I would follow Supreme Court precedent with respect to analyzing and interpreting any constitutional provision.

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

   Response: When interpreting the Constitution, I would start with the plain meaning and express language of the provision at issue. In addition, I would follow Supreme Court precedent with respect to the role of text and original meaning of constitutional provisions when interpreting the Constitution.

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 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: "Plain meaning" refers to the public understanding of the relevant language at the time of enactment.

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

Response: Pursuant to *Lujan v. Defenders of Wildlife*, 504 U.S. 555, (1992), the constitutional requirements for standing are 1) the plaintiff suffered an injury that is "concrete and particularized" and "actual and imminent"; 2) there is a causal connection between that injury and the conduct complained of; and 3) that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

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

Response: The Supreme Court has recognized that Congress has implied powers under the Necessary and Proper Clause to carry out its enumerated powers in the Constitution. *McCulloch v. Maryland*, 17 U.S. 316 (1819).

8. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: I would follow Supreme Court precedent and that of the Sixth Circuit with respect to analyzing the constitutionality of the law.

9. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Supreme Court has held that there are rights that are not specifically enumerated in the Constitution, including the right to marry; the right to have children; the right to marital privacy. The Supreme Court has found 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, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 719-21 (1997) (internal quotations omitted).

10. What rights are protected under substantive due process?

Response: Please see my response to Question No. 9. Additionally, there are fundamental rights that the Supreme Court has held are protected by the Due Process Clauses of the Fifth and Fourteenth Amendments.

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 personal beliefs are not relevant and would play no role in my decision-making process. I would follow Supreme Court and Sixth Circuit precedent with respect to analyzing what rights are protected by substantive due process.

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

Response: The Supreme Court has held that the Commerce Clause authorizes Congress to regulate: 1) "the use of the channels of interstate commerce"; 2) "the instrumentalities of interstate commerce, or persons, or things in interstate commerce"; and 3) "those activities having a substantial relation to interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has identified race, religion, national origin, and alienage as suspect classes that must survive strict scrutiny. *Johnson v. Robinson*, 415 U.S. 361 (1974).

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 is vital to our system of government and constitutional structure. The system of checks and balances prevents power from being concentrated in one branch of government and prevents us from tyranny and abuse of 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: I would first look to the text of the Constitution to determine the scope of the authority granted to that branch government. I would follow Supreme Court and Sixth Circuit precedent when analyzing whether that branch of government exceeded its authority.

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

Response: Empathy should play no role in a judge's consideration of a case. It is always important for a judge to exhibit patience and treat everyone equally and with respect. A judge should base his or her decision on the law and the facts of the case in an impartial manner.

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

Response: Both circumstances are equally unfavorable.

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 no opinion with respect to the frequency with which the Supreme Court has invalidated federal statutes. I will follow Supreme Court and Sixth Circuit precedent when analyzing the constitutionality of federal statutes.

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

Response: Judicial review refers to the Supreme Court's role in determining the constitutionality of the actions of the other branches of government. Judicial Supremacy refers to the Supreme Court's role as final interpreter of the meaning of 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: The role of the judiciary is a limited one. A judge should fairly and impartially decide the case or controversy before him or her. It is not the role of the judiciary to make or enforce laws.

21. **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: The duty of a lower court judge is to follow precedent as established by the Supreme Court and the Circuit in which they sit.

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

Response: A defendant's "group identity" should not be a part of a judge's sentencing analysis. The U.S. Sentencing Guidelines state that race, gender, nationality, sexual orientation or gender identity should play no role in sentencing. These group identities are also not factors to be considered under 18. U.S.C. § 3553(a).

23. **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 have no opinion with respect to the Biden Administration's definition of equity.

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

Response: Equity can be defined as recognizing that each person has different needs and should have their individualized needs addressed. Equality means everyone being treated equally and given the same things.

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

Response: "Equal protection of the laws" is guaranteed by the 14th Amendment.

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

Response: I understand that there has been some research in this area, but I have no specific definition of "systemic racism."

27. How do you define "critical race theory?"

Response: I have no specific definition of "critical race theory." I understand that this term has been used in the area of academics.

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

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

29. Is it appropriate for a federal district court judge to make contributions to political campaigns? How are the federal judicial canons regarding campaign contributions different from the canons applied to Michigan state court judges?

Response: According to the Michigan Code of Judicial Conduct and the Michigan Judicial Tenure Commission, it is ethical and not inappropriate to make campaign contributions. To the extent that the federal judicial canons differ from those of Michigan, I will faithfully follow the federal judicial canons if confirmed as a federal district court judge.

Questions from Senator Thom Tillis
for Shalina Kumar
Nominee to be United States District Judge for the Eastern District of Michigan

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

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Judicial activism is defined by a judge allowing his or her personal views to impact his or her decisions. A judge must always set aside his or her personal views and make decisions based on the law and the facts of the case.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is an 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, a judge should never be involved in policy decisions.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: A judge should always apply the law to the facts of the case in a fair and impartial manner without regard to the outcome.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: I will faithfully follow the Supreme Court and Sixth Circuit precedent, including the precedent established in *Heller* and *McDonald*.

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 will faithfully follow Supreme Court and Sixth Circuit precedent, including that addressing COVID-19 restrictions affecting constitutional rights.

9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: I will faithfully follow Supreme Court and Sixth Circuit precedent with respect to qualified immunity cases. As a judicial nominee, it would not be appropriate for me to opine further on how I would rule on such matters if confirmed as a district court judge.

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, it would not be appropriate for me to opine on the quality of existing Supreme Court precedent. If confirmed, I will faithfully follow the precedent of the Supreme Court and that of the Sixth Circuit.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see my responses to Questions 9 and 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: Please see my response to Question No. 10.

13. How would you apply current patent eligibility jurisprudence to the following hypotheTticals. 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 judicial nominee, it would not be appropriate for me to offer an opinion on how I might rule on this hypothetical question as this issue may come before me if confirmed. I am aware that there is Supreme Court precedent in this area of law, and I would faithfully follow that precedent.

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: As a judicial nominee, it would not be appropriate for me to opine on the quality of existing Supreme Court precedent. If confirmed, I will faithfully follow the precedent of the Supreme Court and that of the Sixth Circuit.

15. Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.

a. What experience do you have with copyright law?

Response: As a state court judge, I have had little to no experience handling copyright matters.

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: As a state court judge, I have not had experience handling cases involving the Digital Millennium Copyright Act.

c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?

Response: As state court judge, I have not had experience in this area of the law.

d. What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?

Response: As a state court judge, I have dealt with issues involving the First Amendment, but I have not had extensive experience with intellectual property or copyright issues.

16. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated

in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: When interpreting legal texts, I start with the plain meaning and express language of the text at issue. In addition, I would follow Supreme Court and Sixth Circuit precedent with respect to the interpretation of the legal text. If there is ambiguity in the text and there is no precedent on point, I may look to legislative history. Some legislative history that might be persuasive would include language that was changed in a statute and statutes that were enacted in response to a court decision.

b. Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?

Response: It is my understanding that there is Supreme Court precedent on this issue, and I will faithfully follow that precedent.

c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?

Response: It is my understanding that there is Supreme Court precedent on this issue, and I will faithfully follow that precedent.

17. The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.

a. How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?

Response: It is my understanding that there is Supreme Court precedent on this issue, and I will faithfully follow that precedent.

b. How can judges best interpret and apply prior judicial opinions that relied upon the then-current state of technology once that technological landscape has changed?

Response: If confirmed, I will faithfully follow Supreme Court precedent, including in the areas of changing technology.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Armando O. Bonilla
Judicial Nominee to the U.S. Court of Federal Claims

1. **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 Federal Circuit has used or defined the term "super precedent." Moreover, it is not a term I have ever used during my nearly 30-year career practicing law. If confirmed, I will faithfully adhere to all Supreme Court and Federal Circuit precedent and will not elevate certain decisions over others.

2. **Should law firms undertake the pro bono prosecution of crimes?**

   Response: The U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction and do not have criminal dockets. Nevertheless, I am mindful that questions about how best to allocate public safety resources is the subject of ongoing political and policy debates between and among federal, state, and local governments. For those reasons, as a judicial nominee, it would be inappropriate for me to offer my personal opinion or otherwise weigh into the debate.

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 am not familiar with Judge Ketanji Brown Jackson's 2013 statement regarding her opinion of the term "living constitution." I do not use the term "living" to describe the Constitution as that term has varying interpretations. Instead, I agree with judges and judicial nominees who have described the Constitution as an "enduring" document as that term more accurately captures our foundational document's preservation of our democracy and the protections of our fundamental rights throughout our history. Indeed, many provisions of the Constitution were, by design, broadly drafted to memorialize our foundational principles of democracy and freedom while allowing their application to circumstances and technologies not envisioned by the framers.

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: Please see my response to Question No. 2

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: Save my 12-week summer employment at a law firm between my second and third year of law school, I have not been employed by a law firm or otherwise studied this issue. For those reasons, and as a judicial nominee, it would be inappropriate for me to offer my personal opinion or otherwise weigh in on this issue.

8. **Should paying clients be able to influence which pro bono clients engage a law firm?**

   Response: Please see my response to Question No. 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. Everyone who desires legal representation deserves legal representation provided they have a non-frivolous claim and a good faith basis upon which to initiate or proceed in a civil action.

10. **Should judicial decisions take into consideration principles of social "equity"?**

    Response: The term "social equity" may mean different things and outcomes to different people. In interpreting or applying statutes or constitutional provisions that specifically call upon courts to take such considerations into account, courts should do so. In contrast, in adopting standards or tests to guide the application of specific statutes or rules silent upon this issue, courts should be mindful not to inadvertently foster inequity. Judges should not disregard clear law in order to promote or otherwise infuse their ideas of social equity.

11. **Is it ever appropriate for a judge to publicly profess political positions on campaigns and/or candidates?**

    Response: Cannon 4 of the American Bar Association's Model Code of Judicial Conduct states: "A Judge Or Candidate For Judicial Office Shall Not Engage In Political Or Campaign Activity That Is Inconsistent With The Independence, Integrity, Or Impartiality Of The Judiciary." Although I have not studied the issue, I understand state laws vary regarding campaigns for elected state court judges and their ability to make campaign contributions.

12. **Is threatening Supreme Court Justices right or wrong?**

Response: Threats of violence are never appropriate.

13. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

Response: True criticism involves an objective evaluation of the merits of a decision or the reasoning employed in reaching a particular result. An attack, in contrast, seeks to undermine the value of the work by devaluing the author.

14. Do you think the Supreme Court should be expanded?

Response: As a judicial nominee, it would be inappropriate to offer my opinion on potential Supreme Court reforms, including the number of justices in active service. If confirmed, I would be bound to follow – and faithfully would follow – all Supreme Court and Federal Circuit precedent without regard to any personal views I might hold. In accordance with Article III of the Constitution, and consistent with the Judiciary Acts passed by Congress throughout our history, I believe Congress is best suited to determine the appropriate number of justices on the Supreme Court. *See* U.S. Const. art III § 1 ("The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.").

15. 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 U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction and do not have criminal dockets; accordingly, it is exceedingly rare that such an issue would come before me if confirmed. Additionally, in the Court of Federal Claims, the United States is always the defendant. Finally, having personally litigated the issue, binding Federal Circuit precedent would preclude my review of decisions made by an Article III court. *See Vereda, Ltda. v. United States*, 271 F.3d 1367, 1375 (Fed. Cir. 2001) ("The Court of Federal Claims 'does not have jurisdiction to review the decisions of district courts.'" *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994)). As a judicial nominee, it would be inappropriate for me to offer an opinion I would be barred from sharing if confirmed.

16. 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: The authority for district courts to enter nationwide (or universal) injunctions has been scrutinized by the Supreme Court. *E.g.*, *Department of Homeland Sec. v. New York*, __ U.S. __, 140 S. Ct. 599, 599-600 (2020) (Gorsuch, J., concurring) (citing *Trump v. Hawaii*, 585 U.S. __, 138 S. Ct. 2392, 2428-29 (2018) (Thomas, J., concurring)). In granting this drastic relief, courts generally look to two factors: (1) whether the defendant violated the Administrative Procedure Act (APA), 5 U.S.C. § 701(a)(2); and (2) the need to

afford complete relief to the prevailing party. The U.S. Court of Federal Claims is a court of limited jurisdiction and, notably, lacks jurisdiction to entertain APA claims or grant pure equitable relief. *See Murphy v. United States*, 993 F.2d 871, 874 (Fed. Cir. 1993). If confirmed, consistent with my practice before the Court of Federal Claims for the better part of a decade, I would focus on the named plaintiffs in the case unless and until the issue of class certification was properly litigated.

17. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court did not articulate a legal standard for courts to evaluate Second Amendment claims. Given the limited jurisdiction of the U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit, the Federal Circuit has not addressed the issue. If confirmed and faced with a Second Amendment challenge, absent further guidance from the Supreme Court, I would look to other circuit courts for persuasive authority. *E.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Beach*, 818 Fed. Appx. 99 (2d Cir. 2020), *cert. granted sub nom. New York State Rifle & Pistol Ass'n, Inc. v., Corlett*, 141 S. Ct. 2566 (U.S. Apr. 26, 2021) (No. 20-843) (whether states' denial of concealed-carry license applications violates the Second Amendment); *Schrader v. Holder*, 704 F.3d 980, 988 (D.C. Cir. 2013).

18. Do you believe that we should defund police departments? Please explain.

Response: The U.S. Court of Federal Claims is a court of limited jurisdiction, does not have a criminal docket, and only hears claims against the *federal* government. Nevertheless, I am mindful that questions about how best to allocate public safety resources is the subject of ongoing political and policy debates between and among federal, state, and local governments. For those reasons, as a judicial nominee, it would be inappropriate for me to offer my personal opinion or otherwise weigh into the debate.

19. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: Please see my response to Question No. 18.

20. Is climate change real?

Response: While I am aware of the significant scientific evidence and scholarship addressing climate change, as a judicial nominee, it would be inappropriate to offer my personal views.

21. Which country is a bigger threat to our national security—Russia or China?

Response: As a judicial nominee, it would be inappropriate for me to offer my personal views on national security issues.

22. Is the Cuban Communist Party a threat to national security?

Response: Please see my response to Question No. 21.

23. Do Blaine Amendments violate the Constitution?

Response: I understand the reference to "Blaine Amendments" relates to laws prohibiting state support for religious schools. The U.S. Court of Federal Claims is a court of limited jurisdiction that only hears claims against the *federal* government. Nonetheless, the Supreme Court addressed this issue in *Espinoza v. Montana Dept. of Revenue*, __ U.S. __, 140 S. Ct. 2246 (2020). If confirmed and ever presented with this issue, I would be bound by – and faithfully would adhere to – Supreme Court and Federal Circuit precedent.

24. Do parents have a constitutional right to direct the education of their children?

Response: In *Washington v. Glucksberg*, the Supreme Court explained: "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 have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); [and] to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923) . . . ." 521 U.S. 702, 719-20 (1997) (alterations to citations).

25. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

a. Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?

Response: No.

c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?

Response: I had several conversations with Christopher Kang in connection with my 2014 nomination to serve as a judge on the U.S. Court of Federal Claims when he served in the White House Counsel's Office during the Obama Administration. I have not spoken to or had any contact with Mr. Kang during his tenure with Demand Justice or otherwise in connection with my pending 2021 re-nomination.

I know Brian Fallon from when we overlapped at the U.S. Department of Justice in the early 2010s, prior to his tenure with Demand Justice. I have had no conversations with Mr. Fallon in connection with any judicial nomination save, perhaps, his congratulating me following my 2014 nomination. I have not spoken to or had any contact with Mr. Fallon during his tenure with Demand Justice or otherwise in connection with my pending 2021 re-nomination.

26. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."

a. Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

Response: No.

c. Have you ever been in contact with anyone associated with Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

Response: No.

27. Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."

a. Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. 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.

Response: No.

c. Are you currently in contact with anyone associated with Arabella Advisors? 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.

d. Have you ever been in contact with anyone associated with Arabella Advisors? 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.

28. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."

a. Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with the Open Society Foundations?

Response: No.

c. Have you ever been in contact with anyone associated with the Open Society Foundations?

Response: No.

29. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."

a. Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

Response: No.

c. Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

Response: No.

30. Please describe the selection process that led to your nomination to be a Judge on the U.S. Court of Federal Claims, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: On February 5, 2013, I submitted a letter to the White House Counsel's Office expressing my interest in serving as a judge on the U.S. Court of Federal Claims. In late August 2013, an official from the White House Counsel's Office contacted me to discuss my interest. Beginning on September 4, 2013, and continuing through late 2016, I was in contact with officials from the Office of Legal Policy at the U.S. Department of Justice. On May 21, 2014, President Obama nominated me to serve as a judge on the Court of Federal Claims. On September 18, 2014, following my July 24, 2014 Confirmation Hearing, the U.S. Senate Committee on the Judiciary reported my nomination. On December 17, 2014, my nomination was returned to the President. I was re-nominated on January 7, 2015, and the Senate Judiciary Committee again reported my nomination on February 26, 2015. My nomination expired on January 3, 2017.

On May 21, 2021, an official from the White House Counsel's Office contacted me to discuss my interest in a re-nomination to serve as a judge on the Court of Federal Claims. On May 22, 2021, I interviewed with attorneys from the White House Counsel's Office. Since May 23, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On June 30, 2021, President Biden announced his intent to nominate me, and my nomination was formally submitted to the Senate for consideration on July 13, 2021.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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 No. 30.

36. Please explain, with particularity, the process whereby you answered these questions.

Response: I reviewed the questions and drafted my answers, conducting legal research where necessary. I submitted my draft responses to the Office of Legal Policy at the U.S. Department of Justice for review and feedback. I revised and finalized my responses for submission to the Senate Judiciary Committee after receiving feedback from the Office of Legal Policy.

Senator Marsha Blackburn
Questions for the Record to Armando O. Bonilla

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

   Response: During my nearly 30-year legal career – including 24 years at the U.S. Department of Justice serving as a civil litigator, criminal prosecutor, appellate advocate, and senior legal and policy advisor – I approached every case and issue the same: take a hard look at all relevant and material facts, research the governing law, and strictly apply the law to the facts or administrative record presented. As documented in the hundreds of legal briefs and memoranda I filed in various federal trial and appellate courts throughout the United States, in each case, my approach to the required legal analysis was dictated by binding Supreme Court and applicable Circuit Court precedent. If confirmed, I would continue this approach in rendering impartial and prompt decisions.

2. **What approach do you take when interpreting a statute?**

   Response: If confirmed as a judge on the U.S. Court of Federal Claims, I would be bound to follow – and faithfully would follow – the interpretive approach dictated by Supreme Court and Federal Circuit precedent. Accordingly, I would first look to Supreme Court and Federal Circuit precedent to ascertain whether the issues of ambiguity and interpretation had been decided and, if so, faithfully follow the relevant binding precedent. If no applicable Supreme Court or Federal Circuit precedent exists, I would analyze the plain meaning of the text within the context of the relevant statutory scheme at the time it was drafted, and any subsequent amendments thereto, and employ traditional canons of statutory interpretation. If, after analyzing the text, I determine the statutory language can only be read one way, the text would not be ambiguous, and my inquiry would end.

   If, however, the statutory text remains unclear or lends itself to more than one plausible interpretation following my exhaustion of the steps outlined above, I would research Supreme Court and Federal Circuit precedent analyzing the same or similar language used in other statutes. If no such analogous authority exists, I would research other jurisdictions for persuasive authority. I might also consider certain legislative history and stated purpose (*e.g.*, committee reports) as permitted by Supreme Court and Federal Circuit precedent, mindful that it might not reliably reflect the views or intent of the entire deliberative body in enacting the legislation. For genuinely ambiguous statutory language, I would look to Supreme Court and Federal Circuit precedent to determine whether it would be appropriate to consider an agency's interpretation of the statute it was charged with administering. *E.g., Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

3. **Do you think it is best to start with the original meaning of the text when interpreting the Constitution?**

Response: The text and original meaning of a constitutional provision play an important role in interpreting the Constitution. In certain cases, the Supreme Court focuses on the original meaning of the text in interpreting the constitutional provision at issue. *E.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment). If confirmed, my interpretive approach to constitutional law would be model adherence to Supreme Court and Federal Circuit precedent.

Nomination of Armando O. Bonilla
to be a United States Judge for the Court of Federal Claims
Questions for the Record
Submitted October 13, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

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

   Response: On October 13, 2021, I reviewed the questions and drafted my answers, conducting legal research where necessary. I submitted my draft responses to the Office of Legal Policy at the U.S. Department of Justice for review and feedback. I revised and finalized my responses for submission to the Senate Judiciary Committee after receiving feedback from the Office of Legal Policy.

4. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.**

   Response: No.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Armando O. Bonilla, Nominee for the Court of Federal Claims

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

   Response: During my nearly 30-year legal career – including 24 years at the U.S. Department of Justice serving as a civil litigator, criminal prosecutor, appellate advocate, and senior legal and policy advisor – I approached every case and issue the same: take a hard look at all relevant and material facts, research the governing law, and strictly apply the law to the facts or administrative record presented. As documented in the hundreds of legal briefs and memoranda I filed in various federal trial and appellate courts throughout the United States, in each case, my approach to the required legal analysis was dictated by binding Supreme Court and applicable Circuit Court precedent. If confirmed, I would continue this approach in rendering impartial and prompt decisions.

   I have not studied the judicial philosophies of individual Supreme Court Justices and, if confirmed as a judge on the U.S. Court of Federal Claims, my role as a trial court judge would be significantly different. Accordingly, I cannot compare the approach I would take to the philosophy of any Supreme Court Justice.

2. **Please briefly describe in your own words your understanding of the interpretative method known as originalism.**

   Response: Although subject to varying views, I understand "originalism" as the belief that the text of the Constitution should be interpreted consistent with the plain meaning of the words as they were understood at the time our founding document was adopted.

3. **Please briefly describe in your own words your understanding of the interpretive method often referred to as living constitutionalism.**

   Response: Although subject to varying views, I understand "living constitutionalism" as the belief that the meaning of the Constitution can change and evolve over time to reflect societal changes and changing circumstances.

4. **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: Although possible that, if confirmed, I could be presented with a constitutional issue of first impression, I struggle to imagine a scenario in which there would be no

precedent – binding, analogous, or persuasive – to assist or guide my decision-making; this is particularly so given the limited jurisdiction of the U.S. Court of Federal Claims. If confirmed, my interpretive approach to constitutional law would be model adherence to Supreme Court and Federal Circuit precedent. In certain cases, the Supreme Court focuses on the original meaning of the text in interpreting the constitutional provision at issue. *E.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment). If ever presented with a true constitutional issue of first impression, and there was no precedent upon which to rely, I would look to the original public meaning of the text of the Constitution and consider inviting the litigants to brief the issue. In this unique circumstance, I also would consider inviting the parties to file a Motion for Certification and Interlocutory Appeal and to Stay Proceeding pursuant to 28 U.S.C. § 1292(d)(3), to ensure the controlling legal issue is timely and conclusively resolved. *E.g.*, *Vereda, Ltda. v. United States*, 271 F.3d 1367 (Fed. Cir. 2001).

5. **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: "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) (emphasis in original).

6. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: Article V of the Constitution describes the formal processes for amending (changing) our founding document. I agree with judges and judicial nominees who have described the Constitution as an enduring document that preserves our democracy and the protections of our fundamental rights throughout our evolutionary history. Indeed, many provisions of the Constitution were, by design, broadly drafted to memorialize our foundational principles of democracy and freedom while allowing for their application to circumstances and technologies not envisioned or imagined by the framers.

7. **President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a judicial nominee, it would be inappropriate to offer my opinion on the merits of a Presidential commission or potential Supreme Court reforms, including the number of justices in active service. If confirmed, I would be bound to follow – and faithfully would follow – all Supreme Court and Federal Circuit precedent without regard to any personal views I might hold. In accordance with Article III of the Constitution, and consistent with the Judiciary Acts passed by Congress throughout our history, I believe Congress is best suited to determine the appropriate number of justices on the Supreme Court. *See* U.S. Const. art III § 1 ("The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.").

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

Response: The Second Amendment right to keep and bear arms is an individual right. *See McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 579-80 (2008).

9. **Is the criminal justice system systemically racist?**

Response: I do not have a personal definition of "systemic racism," but understand it to refer to discriminatory and racial disparities in policies and practices designed to, or having the effect of, creating and maintaining racial inequalities for people of color; it is distinguishable from discrete instances of discrimination by individual actors. Although the U.S. Court of Federal Claims does not have a criminal docket, if confirmed, racism and discrimination will have no place in my courtroom or the courthouse in which I would serve.

10. **Explain the *Feres* doctrine stemming from the Supreme Court's decision in *Feres v. United States*.**

Response: In *Feres v. United States*, the Supreme Court held that the United States "is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." 340 U.S. 135, 146 (1950). In *United States v. Johnson*, the Supreme Court extended the *Feres* doctrine to cases where the servicemember is injured in the performance of their military duties due to the alleged negligence of a *civilian* government employee. 481 U.S. 681 (1987). A year later, in *Boyle v. United Techs. Corp.*, the Supreme Court further extended the immunity doctrine to government contractors where "the Federal Government's interest in the procurement of equipment is implicated by suits . . . even though the dispute is one between private parties." 487 U.S. 500, 506 (1988).

a. Are there any limitations on the *Feres* doctrine that allow an Armed Service member to sue the United States under the Federal Tort Claims Act?

Response: Yes.

b. If so, what are those limitations?

Response: The death or injury must be related to military service; active-duty status alone is not sufficient. *E.g.*, *Schoenfield v. Quamme*, 492 F.3d 1016 (9th Cir. 2007). The *Feres* doctrine also does not extend to the family members of servicemembers killed or injured or otherwise deprive servicemembers from filing a claim on behalf of their deceased family member or minor child. Additionally, although not under the Federal Tort Claims Act, the National Defense Authorization Act (NDAA) for Fiscal Year 2020 established an administrative process within the Department of Defense

(DoD) to assess servicemembers' claims of medical malpractice against a DoD healthcare provider.

11. **Explain the U.S. Supreme Court's holding in *Maine Community Health Options v. United States*.**

Response: In *Maine Comty. Health Options v. United States*, 590 U.S. __, 140 S. Ct. 1308 (2020) – a consolidated appeal from the U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit – the Supreme Court considered alleged breach of contract claims filed against the United States by health insurers for unprofitable health insurance exchanges under the Patient Protection and Affordable Care Act (ACA); specifically, the health insurers sought to recover their alleged losses under the program in accordance with the statutory reimbursement formula (Risk Corridors program) after Congress passed annual appropriation bill riders preventing the payments. The Supreme Court held: (1) Congress created a contractual (money-mandating) obligation through statutory language; (2) the contractual obligation was not contingent upon or otherwise limited by the availability of federal appropriations or other government funds; and (3) the subsequent congressional riders did not impliedly repeal or otherwise cancel the government's contractual obligation. Accordingly, the Court of Federal Claims has Tucker Act jurisdiction to entertain the breach of contract actions.

Senator Josh Hawley
Questions for the Record

Armando Bonilla
Nominee, Judge for the U.S. Court of Federal Claims

1. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

   a. **Do you agree with that philosophy?**

      Response: During my nearly 30-year legal career – including 24 years at the U.S. Department of Justice serving as a civil litigator, criminal prosecutor, appellate advocate, and senior legal and policy advisor – I approached every case and issue the same: take a hard look at all relevant and material facts, research the governing law, and strictly apply the law to the facts or administrative record presented. As documented in the hundreds of legal briefs and memoranda I filed in various federal trial and appellate courts throughout the United States, in each case, my approach to the required legal analysis was dictated by binding Supreme Court and applicable Circuit Court precedent. If confirmed, I would continue this approach in rendering impartial and prompt decisions.

   b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

      Response: Please see my response to Question No. 1(a).

2. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

   Response: If confirmed as a judge on the U.S. Court of Federal Claims, I would be bound to follow – and faithfully would follow – the interpretive approach dictated by Supreme Court and Federal Circuit precedent. In certain cases, the Supreme Court focuses on the original meaning of the text in interpreting the constitutional provision at issue. *E.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment). If confirmed, my interpretive approach to constitutional law would be model adherence to Supreme Court and Federal Circuit precedent.

3. **Do you consider legislative history when interpreting legal texts?**

   Response: If confirmed as a judge on the U.S. Court of Federal Claims, I would be bound to follow – and faithfully would follow – the interpretive approach dictated by Supreme Court and Federal Circuit precedent. Accordingly, I would first look to Supreme Court and Federal Circuit precedent to ascertain whether the issues of ambiguity and interpretation had been decided and, if so, faithfully follow that binding precedent. If no applicable Supreme Court or Federal Circuit precedent

exists, I would analyze the plain meaning of the text within the context of the relevant statutory scheme at the time it was drafted, and any subsequent amendments thereto, and employ traditional canons of statutory interpretation. If, after analyzing the text, I determine the statutory language can only be read one way, the text would not be ambiguous, and my inquiry would end.

If, however, the statutory text remains unclear or lends itself to more than one plausible interpretation following my exhaustion of the steps outlined above, I would research Supreme Court and Federal Circuit precedent analyzing the same or similar language used in other statutes. If no such analogous authority exists, I would research other jurisdictions for persuasive authority. At that point, I might also consider certain legislative history as permitted by Supreme Court and Federal Circuit precedent.

a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?

Response: I would not treat all legislative history the same as some legislative history is more probative of legislative intent than others. For example, a committee report highlighting the intended purpose of new legislation or amendments to an existing statute (*e.g.*, response to a court decision) may be more probative than the statement of an individual legislator.

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: The U.S. Constitution and the laws of the United States are our own. We are not bound by the laws or judicial decisions of other nations.

4. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: As a judicial nominee, it is generally not appropriate to offer my opinion on the merits or propriety of court decisions. If confirmed, I would be bound to follow – and faithfully would follow – all Supreme Court and Federal Circuit precedent. Moreover, the U.S. Court of Federal Claims is a court of limited jurisdiction and does not have jurisdiction to entertain claims arising under, for example, the Sherman Act.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my response to Question No. 4(a).

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: Please see my response to Question No. 4(a).

5. Do you believe America is a systemically racist country?

Response: I do not have a personal definition of "systemic racism," but understand it to refer to discriminatory and racial disparities in policies and practices designed to, or having the effect of, creating and maintaining racial inequalities for people of color; it is distinguishable from discrete instances of discrimination by individual actors. Although the U.S. Court of Federal Claims does not have a criminal docket, if confirmed, racism and discrimination will have no place in my courtroom or the courthouse in which I would serve.

6. Please describe your understanding of the "federal common law."

Response: In *City of Milwaukee v. Illinois & Michigan*, the Supreme Court explained:

> Federal courts, unlike state courts, are not general common-law courts and do not possess a general power to develop and apply their own rules of decision. The enactment of a federal rule in an area of national concern, and the decision whether to displace state law in doing so, is generally made not by the federal judiciary, purposefully insulated from democratic pressures, but by the people through their elected representatives in Congress. . . .
>
> When Congress has not spoken to a particular issue, however, and when there exists a "significant conflict between some federal policy or interest and the use of state law," the Court has found it necessary, in a "few and restricted" instances, to develop federal common law. Nothing in this process suggests that courts are better suited to develop national policy in areas governed by federal common law than they are in other areas, or that the usual and important concerns of an appropriate division of functions between the Congress and the federal judiciary are inapplicable. We have always recognized that federal common law is "subject to the paramount authority of Congress." . . . Federal common law is a "necessary expedient," and when Congress addresses a question previously governed by a decision rested on federal common law the need for such an unusual exercise of lawmaking by federal courts disappears.

451 U.S. 304, 312-14 (1981) (internal citations omitted).

7. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that

applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: The U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction and do not have criminal dockets. Consequently, the Federal Circuit has not developed a legal standard for capital punishment. Nonetheless, in *Bucklew v. Precythe*, the Supreme Court "(re)confirmed that anyone bringing a method of execution claim alleging the infliction of unconstitutionally cruel pain must meet the *Baze-Glossip* test"; specifically, whether the claimant "identified a feasible and readily implemented alternative method of execution the State refused to adopt without a legitimate reason, even though it would significantly reduce a substantial risk of severe pain?" 587 U.S. __, 139 S. Ct. 1112, 1129 (2019).

8. **Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

Response: Please see my response to Question No. 7. In addressing the Eighth Amendment execution protocol issue presented in *Glossip v. Gross*, the Supreme Court held: "prisoners must identify an alternative that is feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain." 576 U.S. 863, 877 (2015).

9. **Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

Response: The U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction and do not have criminal dockets; accordingly, both courts lack jurisdiction to entertain petitions for writs of habeas corpus and have not addressed this issue. *See Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002). Nonetheless, in *District Attorney's Office for the Third Judicial Dist. v. Osborne*, the Supreme Court declined to extend pretrial due process evidentiary protections to post-conviction entitlement to DNA evidence. 557 U.S. 52, 72-74 (2009).

10. **Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."**

    a. **What do you understand this statement to mean?**

    Response: If confirmed as a judge on the U.S. Court of Federal Claims, I would be required to apply binding Supreme Court and Federal Circuit precedent regardless of whether I personally agree with it or the outcome. During my 24-year tenure with the U.S. Department of Justice – including

two decades serving as a civil litigator, criminal prosecutor, and appellate advocate – I learned and embraced that the only desirable outcome in any case is a full and fair assessment of the material facts presented and an application of the governing law. A judge who strictly and faithfully applies the law will inevitably have to render decisions that conflict with their personal beliefs, but our system of justice – and predictability in the law -- depends on it.

11. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

Response: As a nominee to serve as a judge on an inferior court to the U.S. Court of Appeals for the Federal Circuit, it would be inappropriate to offer my opinion on the appropriateness of the Federal Circuit's procedural rules and practices.

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: Please see my response to Question No. 11(a).

12. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?

Response: The U.S. Court of Federal Claims is a court of limited jurisdiction and does not have a criminal docket; nor does the court have jurisdiction to entertain petitions for writs of habeas corpus. *See Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002).

13. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: The U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction. The Court of Federal Claims, moreover, only hears claims against the *federal* government. Nonetheless, the Supreme Court has long held that the Free Exercise Clause is a foundational and fundamental constitutional right. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940). In addressing the applicable legal standard, the Supreme Court has explained:

> In addressing the constitutional protection for free exercise of religion, our cases establish the general proposition that a law that is

> neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. Neutrality and general applicability are interrelated, and, as becomes apparent in this case, failure to satisfy one requirement is a likely indication that the other has not been satisfied. A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531-32 (1993) (internal citation omitted).

Moreover, in *Tandon v. Newsom*, 593 U.S. __, 141 S. Ct. 1294 (2021), the Supreme Court reversed the denial of an injunction pending appeal that would have prohibited the State of California from enforcing its COVID-19 restrictions against the applicants' private, in-home religious gatherings. In doing so, the Supreme Court made clear:

> [G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise. It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue."

593 U.S. at __, 141 S. Ct. at 1296 (emphasis in original; citations omitted). The Supreme Court further explained that in determining whether "two 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.* In addressing the standard of judicial review applicable to the state action impacting the Free Exercise Clause, the Supreme Court emphasized that the government bears the burden of satisfying strict scrutiny. *Id.* at 1296-97. Finally, the Supreme Court addressed the issue of mootness, noting that the government's authority to rescind or modify the challenged state action at any time does not necessarily end the need for injunctive relief. Id. at 1297.

14. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: The U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction. In confirmed, and in the exceedingly rare instance that a matter involving a person's sincere religious belief under the First Amendment, I would model my constitutional analysis based on binding Supreme Court precedent. *E.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

15. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

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).

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

16. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: The Supreme Court in *Trump v. Hawaii*, 585 U.S. __, 138 S. Ct. 2392, 2423 (2018), reversed the Court's prior decision in *Korematsu v. United States*, 323 U.S. 214 (1944).

17. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

Response: As a judicial nominee, it is generally not appropriate to offer my opinion on the merits or propriety of Supreme Court decisions. If confirmed, I will be bound to follow – and faithfully will follow – all Supreme Court and Federal Circuit precedent unless and until a court of competent jurisdiction formally overturns them or Congress supersedes them.

a. If so, what are they?

Response: Please see my response to Question No. 17.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: Yes.

18. What is the standard for exercising each kind of abstention in the court to which you have been nominated?

Response: The U.S. Court of Federal Claims is a court of limited jurisdiction and only hears claims against the *federal* government. It would be exceedingly rare for a matter to be properly filed in the Court of Federal Claims with overlapping issues falling within the concurrent jurisdictional province of a state court. If confirmed and presented with an abstention motion, I would look to Supreme Court and Federal Circuit precedent for guidance. *E.g.*, *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813-17 (1976); *Warsaw Orthopedic, Inc. v. Sasso*, 977 F.2d 1224, 1229-30 (Fed. Cir. 2020).

19. Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?

Response: No.

a. If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.

Response: Please see my response to Question No. 19.

20. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: The U.S. Court of Federal Claims is a court of limited jurisdiction and only hears claims for monetary damages against the *federal* government.

a. Do you believe that identical texts should be interpreted identically?

Response: Please see my response to Question No 20(a).

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Please see my response to Question No. 20(a).

21. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954), was correctly decided?

Response: As a general matter, it is not appropriate for a judicial nominee to comment on the merits of Supreme Court precedent which, if confirmed, I would be bound to follow – and faithfully would follow – regardless of whether I believe it was correctly decided. As a judge, my personal opinions and beliefs would be irrelevant and would play no role in my decision-making. Nevertheless, there are a limited number of settled precedents unlikely to be relitigated – particularly before the U.S. Court of Federal Claims – that prior judicial nominees have confirmed were correctly decided. *Brown v. Board of Educ. of Topeka*, 347 U.S. 483 (1954), is one of those limited cases. I agree.

22. Do federal courts have the legal authority to issue nationwide injunctions?

Response: The authority for district courts to enter nationwide (or universal) injunctions has been scrutinized by the Supreme Court. *E.g.*, *Department of Homeland Sec. v. New York*, __ U.S. __, 140 S. Ct. 599, 599-600 (2020) (Gorsuch, J., concurring) (citing *Trump v. Hawaii*, 585 U.S. __, 138 S. Ct. 2392, 2428-29 (2018) (Thomas, J., concurring)). In granting this drastic relief, courts generally look to two factors: (1) whether the defendant violated the Administrative Procedure Act (APA), 5 U.S.C. § 701(a)(2); and (2) the need to afford complete relief to the prevailing party. The U.S. Court of Federal Claims is a court of limited jurisdiction and, notably, lacks jurisdiction to entertain APA claims or grant pure equitable relief. *See Murphy v. United States*, 993 F.2d 871, 874 (Fed. Cir. 1993). If confirmed, consistent with my practice before the Court of Federal Claims for the better part of a decade, I would focus on the named plaintiffs in the case unless and until the issue of class certification was properly litigated.

a. If so, what is the source of that authority?

Response: Please see my response to Question No. 22.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Please see my response to Question No. 22.

23. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my response to Question No. 22.

24. What is your understanding of the role of federalism in our constitutional system?

Response: Federalism is a system of government where power is divided and shared between the national (federal) government and the local (state) governments. The principal features of our constitutional government include: two or more levels of government (*i.e.*, federal, state, local); the different tiers of government govern the same citizens in a layered effect, with each tier empowered to enact laws, tax, and govern; the jurisdictional limits of each tier of government are specified in the Constitution; tiers of courts have the power to interpret the Constitution and subordinate laws depending on their jurisdictional reach; and the fundamental provisions of the Constitution cannot be unilaterally changed by one tier of government. In contrast, in a unitary government, a central authority holds the power; and, in a confederation, the decentralized states are dominant.

25. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my response to Question No. 18.

26. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: In *Washington v. Glucksberg*, the Supreme Court explained:

> 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, *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992). We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. *Cruzan v. Missouri Dep't of Health*, 497 U.S. 261, 278-79 (1990).

521 U.S. 702, 719-20 (1997) (alterations to citations); *see also Saenz v. Roe*, 526 U.S. 489 (1999) (right to travel). Since *Glucksberg*, the Supreme Court has recognized the right of same-sex couples to engage in sexual relations and to marry. *See Lawrence v. Texas*, 539 U.S. 558 (2003), and *Obergefell v. Hodges*, 576 U.S. 644 (2015).

27. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: The Supreme Court has long held that the Free Exercise Clause is a foundational and fundamental constitutional right. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940). Although that right is not absolute, *e.g.*, *Reynolds v. United States*, 98 U.S. 145 (1878) (upholding law criminalizing polygamy), government actions restricting the free exercise of religion are subjected to strict scrutiny. *See Sherbert v. Verner*, 374 U.S. 398 (1963).

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: Please see my response to Question No. 27(a).

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: Please see my response to Question No. 27(a).

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: The U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction. In confirmed, and in the exceedingly rare instance that a matter involving a person's sincere religious belief under the First Amendment, I would model my constitutional analysis based on binding Supreme Court precedent. *E.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The Religious Freedom Restoration Act (RFRA) of 1993 "ensures that interests in religious freedom are protected." 42 U.S.C. § 2000bb et seq. In *Boerne v. Flores*, 521 U.S. 507 (1997), the Supreme Court limited its applicability to the federal government. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 424 & n.1 (2006). Specifically, RFRA provides that the federal government may not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability unless the government can demonstrate the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb1.

Further, in *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. __, 140 S. Ct. 2049 (2020), the Supreme Court held that the "ministerial exception" set forth in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012), was not limited to employees of religious institutions with ministerial titles or religious training, but necessarily extended to employees whose functions were religious in nature. The plaintiffs in *Our Lady of Guadalupe* were two elementary school teachers employed by private religious schools. In barring them from bringing discrimination cases against their employer, the Supreme Court held: "[j]udicial review of the way in which religious schools discharge [education] responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate." 591 U.S. at __, 140 S. Ct. at 2055.

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the

Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

28. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: The U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction and do not have criminal dockets. As a judicial nominee, it would be inappropriate to offer my personal opinion or otherwise weigh in on this issue.

29. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: I am not familiar with this quote. Moreover, as a judicial nominee, it is generally not appropriate to offer my opinion on the merits or propriety of court decisions. If confirmed, I would be bound to follow – and faithfully would follow – all Supreme Court and Federal Circuit precedent.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: Please see my response to Question No. 29(a).

30. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: Please see my response to Question No. 13.

31. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

Response: The U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction and do not have criminal dockets; accordingly, both courts lack jurisdiction to entertain petitions for writs of habeas corpus and have not addressed this issue. *See Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002).

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

Response: Please see my response to Question No. 31(a).

c. If you disagree with either of these statements, please explain why and provide examples.

Response: Please see my response to Question No. 31(a).

c. If confirmed, would you treat unpublished decisions as precedential?

Response: In accordance with Federal Rule of Appellate Procedure 32.1(a), if confirmed, I would treat unpublished decisions issued by the Federal Circuit as persuasive (rather than binding) authority and look to such opinions for guidance on how the Federal Circuit likely would expect a subordinate court to consider a particular issue.

d. If not, how is this consistent with the rule of law?

Response: Please see my response to Question No. 31(c) above.

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: Yes, and I would be transparent with the parties about the relative weight unpublished decisions would be afforded consistent with my response to Question No. 31(c) above.

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: No, but I would be transparent with the parties about the relative weight unpublished decisions would be afforded consistent with my response to Question No. 31(c) above.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: No, but I would be transparent with the parties about the relative weight unpublished decisions would be afforded consistent with my response to Question No. 31(c) above.

32. In your legal career:

a. How many cases have you tried as first chair?

Response: 12 (8 civil; 4 criminal).

b. How many have you tried as second chair?

Response: 1 (criminal).

c. How many depositions have you taken?

Response: Dozens (civil & criminal).

d. How many depositions have you defended?

Response: Dozens (civil).

e. How many cases have you argued before a federal appellate court?

Response: 50+ (briefed & argued: First, Third & Federal Circuits; briefed only: Second, Fifth & Eleventh Circuits)

f. How many cases have you argued before a state appellate court?

Response: None.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: Between 1994 and 2018, I served in the U.S. Department of Justice as a civil litigator, federal prosecutor, appellate advocate, and senior legal and policy advisor. During that time, and in my varying roles, I worked with and presented to a number of federal agencies. I also appeared before and briefed members of Congress and their staffs and briefed White House and Administrative officials and their staffs. In my current role at Capital One, I have quarterly meetings with federal financial industry regulators.

h. How many dispositive motions have you argued before trial courts?

Response: Dozens (civil & criminal).

i. How many evidentiary motions have you argued before trial courts?

Response: Dozens (civil & criminal).

33. If any of your previous jobs required you to track billable hours:

Response: None of my previous jobs required me to track billable hours.

a. What is the maximum number of hours that you billed in a single year?

Response: Please see my response to Question No. 33.

b. What portion of these were dedicated to pro bono work?

Response: Please see my response to Question No. 33.

34. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I understand this statement to mean that judges are charged with interpreting the law as written and consistent with binding precedent and applying the law to the factual record presented; judges do not have the authority to make the laws.

b. Do you agree or disagree with this statement?

Response: I generally agree with this statement insofar as the Chief Justice was referring to federal judges; state court judges also bear the responsibility of developing common law.

35. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I understand this statement to mean that judges must not inject their personal views into a decision or case to decide what the law *should be*; rather, judges should base all of their decisions on what the law *is*.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: I agree.

36. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: The U.S. Court of Federal Claims is a court of limited jurisdiction and, notably, lacks jurisdiction to grant pure equitable relief. *See Murphy v. United States*, 993 F.2d 871, 874 (Fed. Cir. 1993). Moreover, as a judicial nominee, it is generally not appropriate to offer an opinion or otherwise suggest to future litigants how a particular judge, if confirmed, would be predisposed to rule without the benefit of a full factual record or the arguments advanced by the parties.

37. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

Response: No.

a. If yes, please provide appropriate citations.

Response: Please see my response to Question No. 37.

38. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media?

Response: No.

a. If so, please produce copies of the originals.

Response: Please see my response to Question No. 38.

39. What were the last three books you read?

Response: *American Moonshot: JFK and the Great Space Race* by Douglas Brinkley; *The Boys in the Boat: Nine Americans and Their Epic Quest for Gold at the 1936 Berlin Olympics*, by Daniel James Brown; and *Into Thin Air* by Jon Krakauer.

40. What case or legal representation are you most proud of?

Response: For nearly 24 years, I served in the U.S. Department of Justice as a civil litigator, criminal prosecutor, appellate advocate, and senior legal and policy advisor. During that time, each time I stood up in a federal courtroom across this nation, I proudly represented the American people.

41. Have you ever taken a position in litigation that conflicted with your personal views?

Response: No.

a. How did you handle the situation?

Response: Please see my response to Question No. 41.

b. If confirmed, do you commit to applying the law as written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

42. What three law professors' works do you read most often?

Response: There are no particular law professors' works I read with any regularity.

43. Which of the Federalist Papers has most shaped your views of the law?

Response: My views of the law have not been shaped by a particular Federalist Paper.

44. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: The opinions that have most often made me change my mind are the judicial opinions in which the arguments I advanced were not adopted by the court.

45. Do you believe that an unborn child is a human being?

Response: The U.S. Court of Federal Claims is a court of limited jurisdiction. Although it is unlikely that, if confirmed, a case before me would involve issues involving when life begins, as judicial nominee, it would be inappropriate to offer my personal opinion. If confirmed and this issue was presented in a matter before me, my personal views would be irrelevant. I would be bound to follow – and would faithfully follow – binding Supreme Court and Federal Circuit precedent. Currently, in addressing this issue, the Supreme Court is focused on viability. *E.g.*, *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 846 (1992).

46. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: Yes. On July 24, 2014, I testified before the U.S. Senate Committee on the Judiciary in connection with my May 21, 2014 (initial) nomination to serve as a judge on the U.S. Court of Federal Claims. *See* https://www.judiciary.senate.gov/meetings/judicial-nominations_2014-07-24

47. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade*, 410 U.S. 113 (1973)?

Response: No.

b. The Supreme Court's substantive due process precedents?

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

e. Response: No.

48. Do you currently hold any shares in the following companies:

a. Apple?

Response: No.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

49. Have you ever authored or edited a brief that was filed in court without your name on the brief?

Response: No.

a. If so, please identify those cases with appropriate citation.

Response: Please see my previous response.

50. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Please see my previous response.

51. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: Having served in the U.S. Department of Justice for nearly 24 years – including two decades as a civil litigator and a criminal prosecutor – I take testimonial oaths as well as oaths of office quite seriously. I also appreciate and respect the Senate Judiciary Committee's constitutional obligation to perform its advise and consent role in assessing judicial nominees. In fact, during my tenure with the Department of Justice, I prosecuted a federal government official for obstructing a Senate investigation. The Senate Judiciary Committee is owed the respect and candor the Constitution demands.

Questions for the Record for Armando Bonilla
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

Armando Omar Bonilla, Nominee for the United States Court of Federal Claims

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

   Response: During my nearly 30-year legal career – including 24 years at the U.S. Department of Justice serving as a civil litigator, criminal prosecutor, appellate advocate, and senior legal and policy advisor – I approached every case and issue the same: take a hard look at all relevant and material facts, research the governing law, and strictly apply the law to the facts or administrative record presented. As documented in the hundreds of legal briefs and memoranda I filed in various federal trial and appellate courts throughout the United States, in each case, my approach to the required legal analysis was dictated by binding Supreme Court and applicable Circuit Court precedent. If confirmed, I would continue this approach in rendering impartial and prompt decisions.

2. **What sources do you turn to when deciding a case involving constitutional provisions?**

   Response: If confirmed as a judge on the U.S. Court of Federal Claims, I would be bound to follow – and faithfully would follow – the interpretive approach dictated by Supreme Court and Federal Circuit precedent. Having practiced before the U.S. Court of Federal Claims and the Federal Circuit for the better part of a decade, I believe it would be exceedingly rare for a true constitutional issue of first impression to be presented before the Court of Federal Claims. If, however, I were ever presented with such an issue, I would read the text of the constitutional provision in context, assess the plain meaning of the language, and model my interpretive approach in strict adherence to Supreme Court and Federal Circuit precedent.

3. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

   Response: If confirmed as a judge on the U.S. Court of Federal Claims, I would be bound to follow – and faithfully would follow – the interpretive approach dictated by Supreme Court and Federal Circuit precedent. Accordingly, I would first look to Supreme Court and Federal Circuit precedent to ascertain whether the issues of ambiguity and interpretation had been decided and, if so, faithfully follow the relevant binding precedent. If no applicable Supreme Court or Federal Circuit precedent exists, I would analyze the plain meaning of the text within the context of the relevant statutory scheme at the time it was drafted, and any subsequent amendments thereto, and employ traditional canons of statutory interpretation. If, after analyzing the text, I determine the statutory language can only be read one way, the text would not be ambiguous, and my inquiry would end.

If, however, the statutory text remains unclear or lends itself to more than one plausible interpretation following my exhaustion of the steps outlined above, I would research Supreme Court and Federal Circuit precedent analyzing the same or similar language used in other statutes. If no such analogous authority exists, I would research other jurisdictions for persuasive authority. I might also consider certain legislative history and stated purpose (*e.g.*, committee reports) as permitted by Supreme Court and Federal Circuit precedent, mindful that it might not reliably reflect the views or intent of the entire deliberative body in enacting the legislation. For genuinely ambiguous statutory language, I would look to Supreme Court and Federal Circuit precedent to determine whether it would be appropriate to consider an agency's interpretation of the statute it was charged with administering. *E.g., Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

a. Does plain meaning of a statute refer to the public understanding of the relevant language at the time of the enactment, or does the meaning changes as social norms and linguistic conventions evolve?

Response: It is my understanding that the "plain meaning" of a statute or constitutional provision refers to the generally understood meaning of the language employed at the time of enactment.

4. What are the requirements for standing in the Court of Federal Claims?

Response: "The Court of Federal Claims, though an Article I court, 28 U.S.C. § 171 (2000), applies the same standing requirements enforced by other federal courts created under Article III." *See Anderson v. United States*, 344 F.3d 1343, 1349-50 n.1 (Fed. Cir. 2003). In *Lujan v. Defenders of Wildlife*, the Supreme Court articulated the three critical elements of stating:

> First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical[.]'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

504 U.S. 555, 560-61 (1992) (internal citations omitted).

5. What role does precedent play in the opinions of a Court of Federal Claims judge?

Response: If confirmed as a judge on the U.S. Court of Federal Claims, I would be bound to follow – and faithfully would follow – Supreme Court and Federal Circuit precedent in every case.

6. **What legal experience do you think is necessary for a person to make a good Court of Federal Claims judge, and what have you done to gain this experience?**

Response: As a nominee to serve as a judge on the U.S. Court of Federal Claims, I believe the question of what legal experience is necessary to serve on the court is more properly within the province of the President in appointing judges to serve on the court, and the Senate's role in providing advice and consent on those nominations.

While a wide variety of professional experiences might make for good Court of Federal Claims judges, I believe my legal experience is one of them, and I hope that you will agree. With regard to my qualifications, I spent the better part of a decade practicing law before the Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit. During that time, I litigated over 100 cases before the Court of Federal Claims and briefed and argued over 50 appeals before the Federal Circuit. I also co-authored a chapter on "Military Pay" in *The United States Court of Federal Claims: A Deskbook for Practitioners* (4th ed. Apr. 1998). During my 2-year clerkship in the U.S. District Court for the District of New Jersey, and throughout my nearly 24-year tenure serving in the U.S. Department of Justice as a civil litigator, federal prosecutor, appellate advocate, and senior legal and policy advisor, I handled nearly every case typology I would see on the Court of Federal Claims if confirmed.

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

Response: None.

8. **The Court of Federal Claims has been called "the keeper of the Nation's conscience" and the "People's court." How do you see the court fulfilling such a role? How do you see yourself fulfilling this role if you are confirmed?**

Response: As I testified before the Senate Judiciary Committee during my confirmation hearing, "Having spent the better part of a decade practicing before [the U.S. Court of Federal Claims], I understand the importance to the American citizens that the government hold itself accountable for its actions." Tr. at 141 (Oct. 6, 2021). The Court of Federal Claims gives effect to the fundamental principle of our Constitution that the sovereign answers to its citizens. If confirmed, I will work every day to earn a reputation of a jurist with absolute integrity, impartiality, and an unwavering commitment to the rule of law, who is ably prepared, rules promptly, and treats everyone in his courtroom and the courthouse with dignity and respect.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Carolyn Lerner
Judicial Nominee to the U.S. Court of Federal Claims

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

   Response: "Super precedent" is not a term that I have used in my legal practice or addressed as Chief Circuit Mediator for the federal courts in the D.C. Circuit. To my knowledge, the Supreme Court has not used or defined the term "super precedent." If confirmed, I will faithfully adhere to all Supreme Court and Federal Circuit precedent.

2. **Should law firms undertake the pro bono prosecution of crimes?**

   Response: I was in private practice for 20 years and from that experience I know that law firms consider many factors when determining which clients to represent and what pro bono matters to take, including conflicts of interest. Beyond that, I do not have a view about what cases law firms should undertake.

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 am not familiar with that quote by Judge Ketanji Brown Jackson. The term "living constitution" can have different meanings to different people, and it is not a term I have ever used in my legal practice. I believe the Constitution is an enduring document. If confirmed, I will faithfully follow the Constitution and Supreme Court and Federal Circuit precedent.

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 authority that would provide for private prosecution of federal criminals, nor has this issue arisen in my 30 years of legal experience and public service.

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: Throughout my legal career, I have hired many lawyers, law clerks and interns. I have considered only their qualifications in making hiring decisions, including their academic and professional backgrounds. I have never considered an applicant's membership in the Federalist Society, or any other organization, as a factor in hiring decisions. Similarly, if confirmed, I would not consider a law clerk applicant's membership in the Federalist Society, or any other association.

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: See Answer to Question 2.

8. Should paying clients be able to influence which pro bono clients engage a law firm?

Response: See Answer to Question 2.

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: No. Judges should take into consideration the facts of a particular case and impartially apply relevant law and precedent to those facts.

11. Is it ever appropriate for a judge to publicly profess political positions on campaigns and/or candidates?

Response: Federal judges should follow the Code of Conduct for United States Judges. Canon 5 provides that a judge should refrain from political activity.

12. Is threatening Supreme Court Justices right or wrong?

Response: It would be wrong to threaten a Supreme Court Justice, or anyone else.

13. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

Response: The term "attacks" can have different meanings to different people and the meaning also depends on the context in which the word is used. It is not possible to differentiate between "attacks" versus "criticism," without such context.

14. Do you think the Supreme Court should be expanded?

Response: The question of whether the Supreme Court should be expanded is a policy decision. If confirmed, I will follow Supreme Court precedent regardless of the number of Justices on the Court.

15. Should a defendant's personal characteristics influence the punishment he or she receives?

Response: No.

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: I do not have a view about this question and note that the Court of Federal Claims, to which I have been nominated, does not have a criminal docket.

17. What is the legal basis for a nationwide injunctions? What considerations would you consider as a district judge when deciding whether to grant one?

Response: A nationwide injunction occurs if a court enjoins all defendants who are in similar disputes nationwide on the basis of its findings and conclusions concerning one matter. This is not the same as enjoining one defendant (the federal government) from implementing a rule that has been invalidated.

I am a nominee to the Court of Federal Claims, which unlike Article III District Courts is a court of limited jurisdiction and hears only monetary claims against the federal government. Moreover, the Court of Federal Claims has only limited authority to issue injunctive relief, and does not have authority to enjoin policies or practices of the federal government. Accordingly, if I am confirmed to be a judge on the Court of Federal Claims, I do not foresee there being an occasion to impose a nationwide injunction.

18. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

Response: The Court of Federal Claims is a court of limited jurisdiction and hears only monetary claims against the federal government; it does not hear cases involving Second Amendment rights. Therefore, if I am confirmed to be a judge on the Court of Federal Claims, I would not decide matters involving the Second Amendment. My understanding of the holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008) is that the Second Amendment protects an "individual right to possess and carry weapons in case of confrontation." *Id.* at 592. The right is not unlimited, and applies to the types of weapons that were "in common use at the time," not to "dangerous and unusual weapons." *Id.* at 627.

19. Do you believe that we should defund police departments? Please explain.

Response: Questions regarding funding for police departments and law enforcement are for policy makers to consider.

20. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: Questions regarding funding for police departments and social services are for policy makers to consider.

21. Is climate change real?

Response: Questions regarding climate change are scientific in nature and for policy makers to consider.

22. Is gun violence a public-health crisis?

Response: Questions regarding gun violence and public health are for policy makers to consider.

23. Is racism a public-health crisis?

Response: Questions regarding racism and public health are for policy makers to consider.

24. Is the federal judiciary systemically racist?

Response: I do not have a personal definition of "systemic racism," and it is not a term I have used in my legal practice. If confirmed as a judge, I will treat all those who appear before me equally, fairly, and with respect.

25. Which country is a bigger threat to our national security—Russia or China?

Response: I do not have a view on whether Russia or China is a bigger threat to our national security. This is a question for policy makers to consider.

26. Is the Cuban Communist Party a threat to national security?

Response: I do not have a view on whether the Cuban Communist Party is a threat to our national security. This is a question for policy makers to consider.

27. Do Blaine Amendments violate the Constitution?

Response: In *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), the Supreme Court held that if a state provides subsidies for private education, it cannot disqualify private schools from similar aid based on religion. In my current role as Chief Circuit Mediator for the D.C. Circuit, I am bound by the Code of Judicial Ethics, and it would be inappropriate for me to comment on legal issues that could become the subject of litigation or of mediation in the Court's Mediation Program. As a mediator, neutrality is a basic requirement to which I am bound. In addition, it is generally inappropriate for judicial nominees to comment on the merits of any particular Supreme Court decision. If I am confirmed to be a judge on the Court of Federal Claims, I would follow all Supreme Court and Federal Circuit precedent.

28. Do parents have a constitutional right to direct the education of their children?

Response: The Supreme Court has held that the due process clauses of the Fifth and Fourteenth Amendments to the Constitution protect certain unenumerated rights that are "fundamental" and "deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). Among these rights is the right to parent. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

29. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?**

Response: I know Chris Kang, who works at Demand Justice, from when we we both served in the Obama Administration. I spoke to him when I was considering a potential nomination to the Court of Federal Claims, and he offered his congratulations when I was nominated.

30. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."

a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: I have known Nan Aron, the former President of the Alliance for Justice, for approximately twenty years. I am in contact with her periodically.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: See Answer to Question 29(c) and 30(b).

31. Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."

a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **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.**

Response: No.

c. **Are you currently in contact with anyone associated with Arabella Advisors? 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.

d. **Have you ever been in contact with anyone associated with Arabella Advisors? 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.

32. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."

a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

33. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."

a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

34. 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 have not been nominated to be a United States District Judge. However, on February 11, 2021, the White House Counsel's Office requested I submit a cover letter and resume to be a judge on the United States Court of Federal Claims. On February 18, 2021, I interviewed with the White House Counsel's Office. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 30, 2021, the President announced his intent to nominate me.

35. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?

a. **Did anyone do so on your behalf?**

Response: See Answer to Question 29(c). In addition, I am not aware of anyone who may have communicated with Demand Justice on my behalf.

36. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?

a. **Did anyone do so on your behalf?**

Response: I did not communicate with anyone from or anyone directly associated with the American Constitution Society during my selection process. I am not aware of anyone communicating with the American Constitution Society on my behalf.

37. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known

subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

a. **Did anyone do so on your behalf?**

Response: I did not communicate with anyone from or anyone associated with Arabella Advisors or its subsidiaries during my selection process. I am not aware of anyone communicating with these organizations on my behalf.

38. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?

a. **Did anyone do so on your behalf?**

Response: I did not communicate with anyone from or anyone associated with the Open Society Foundation during my selection process. I am not aware of anyone communicating with this organizations on my behalf.

39. 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 11, 2021, the White House Counsel's Office requested I submit a cover letter and resume to be a judge on the United States Court of Federal Claims. On February 18, 2021, I interviewed with the White House Counsel's Office. Since then, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On June 30, 2021, the President announced his intent to nominate me.

40. Please explain, with particularity, the process whereby you answered these questions.

Response: On October 13, 2021, I received these questions from the Office of Legal Policy (OLP). I reviewed the questions, conducted legal research, reviewed my records when necessary to refresh my recollection, and drafted my answers. OLP provided feedback on my draft, which I considered, before submitting my final answers to the Committee.

Senator Marsha Blackburn
Questions for the Record to Carolyn N. Lerner

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

   Response: I currently serve as the Chief Circuit Mediator for the federal courts in the D.C. Circuit. In that role, as in my prior roles as an adjudicator and agency head, my approach has been to make sure that every party is treated fairly and with respect. I carefully review the parties' factual arguments, ask clarifying questions, and then research and apply the relevant law, rule or regulation to impartially make a decision, or in the case of a mediation, to provide the parties with an assessment of the strengths and weaknesses of their cases should they request that I do so. This would be my approach if I am fortunate to be confirmed as a judge on the Court of Federal Claims. In addition, as a lower court judge, if confirmed, it would be my obligation to faithfully follow Supreme Court and Federal Circuit precedent.

2. **What approach do you take when interpreting a statute?**

   Response: I would first review the plain text of the statute. If the meaning is plain on its face, then the inquiry ends there. If any ambiguity remains about the plain meaning of the statute, I would look to Supreme Court or Federal Circuit precedent regarding the statute in question. If there were no controlling precedent, I would research precedent on analogous statutes or applicable precedent in other Circuits. As a last resort, I might consider the statute's legislative history, which while not binding can provide assistance in determining Congress's intent when enacting the statute.

3. **Do you think it is best to start with the original meaning of the text when interpreting the Constitution?**

   Response: If I am confirmed to the Court of Federal Claims, I would be bound by Supreme Court and Federal Circuit precedent concerning the appropriate method of interpreting the text and original meaning of the Constitution. It is difficult to contemplate that I would be faced with a constitutional issue of first impression with no binding precedent from those courts. In the unlikely event that this occurred, I would follow the analysis used by those courts to interpret constitutional issues. For example, in *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008), the Court used the original public meaning of the text.

Nomination of Carolyn Lerner Questions for the Record
Submitted October 18, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

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

   Response: On October 13, 2021, I received these questions from the Office of Legal Policy (OLP). I reviewed the questions, conducted legal research, reviewed my records when necessary to refresh my recollection, and drafted my answers. OLP provided feedback on my draft, which I considered, before submitting my final answers to the Committee.

4. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.**

   Response: No other individual wrote or drafted my answers to these questions or the written questions of the other members of the Committee.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Carolyn N. Lerner, Nominee for the Court of Federal Claims

1. **Please describe the Federal Circuit's holding in *Kaplan v. Conyers*.**

   Response: In *Department of Navy v. Egan*, 484 U.S. 518 (1988), the Supreme Court limited the Merit Systems Protection Board's review over security clearance determinations. The question presented in *Kaplan v. Conyers* was whether *Egan* applied to low-level Defense Department civilian employees who do not hold security clearances, but still hold "sensitive" positions. The *en banc* Federal Circuit held that *Egan's* principles applied and the Board had no authority to review decisions relating to employees holding "sensitive" positions.

2. **While working at the Office of Special Counsel, you criticized the Federal Circuit's opinion in *Kaplan v. Conyers*, because you thought the decision posed a "significant threat to whistleblower protections for hundreds of thousands of federal employees in sensitive positions and may chill civil servants from blowing the whistle." Based on your stated reaction to the opinion, it clearly disappointed you, and you disagreed its outcome.**

   a. As a judge, would you faithfully apply *Kaplan v. Conyers*?

   Response: Yes.

   b. Would you faithfully apply precedent with which you disagree?

   Response: Yes.

3. **As Special Counsel, you also spoke out in favor of reforming the Hatch Act, arguing that the law is difficult to interpret and apply to modern technologies, and that it encourages agencies not to report violations. As a judge, how would you apply the Hatch Act to modern technologies?**

   Response: The Hatch Act only applies to Executive Branch employees and is enforced by the Office of Special Counsel. The Court of Federal Claims does not have jurisdiction over the Hatch Act. Therefore, I would not apply the Hatch Act if I am confirmed to be a judge on the Court of Federal Claims.

4. **Is Congress or the Judiciary best equipped to reform or revise provisions of the Hatch Act?**

Response: Congress is best equipped to reform the Hatch Act and did so in the Hatch Act Modernization Act of 2012.

5. **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 currently serve as the Chief Circuit Mediator for the federal courts in the D.C. Circuit. In that role, as in my prior roles as an adjudicator and agency head, my approach has been to make sure that every party is treated fairly and with respect. I review the parties' factual arguments carefully, ask clarifying questions, and apply the relevant law, rule or regulation to impartially make a decision, or in the case of a mediation, to provide the parties with an assessment of the strengths and weaknesses of their cases should they request that I do so. This would be my approach if I am fortunate to be confirmed as a judge on the Court of Federal Claims. I have not studied the philosophies of Supreme Court Justices, nor would they be applicable to me as a lower court judge. As a lower court judge, if confirmed, it would be my obligation to follow Supreme Court and Federal Circuit precedent.

6. **Please briefly describe in your own words your understanding of the interpretative method known as originalism.**

Response: Black's Law Dictionary defines originalism as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect."

7. **Please briefly describe in your own words your understanding of the interpretive method often referred to as living constitutionalism.**

Response: Black's Law Dictionary defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values."

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

9. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: No

10. **President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a judicial nominee, it would not be appropriate for me to express an opinion on potential reform of the Supreme Court. If confirmed, I would follow Supreme Court precedent regardless of the number of Justices on the Court.

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

Response: Yes. The Supreme Court held in *District of Columbia v. Heller* "that the Second Amendment confers an individual right to keep and bear arms." 554 U.S. 570, 622 (2008).

12. **Is the criminal justice system systemically racist?**

Response: I do not have a personal definition of "systemic racism," and it is not a term I have used in my legal practice. If confirmed as a judge, I will treat all those who appear before me equally, fairly, and with respect.

13. **Explain the *Feres* doctrine stemming from the Supreme Court's decision in *Feres v. United States*.**

Response: The Court of Federal Claims does not hear cases under the Federal Tort Claims Act (FTCA), and the *Feres* doctrine would not arise in cases I would hear if confirmed to be a judge. The *Feres* doctrine is from the Supreme Court's decision in *Feres v. United States*, 340 U.S. 135 (1950). It prevents members of the armed forces who are injured while on active duty from successfully suing the federal government under the FTCA. In *Feres*, the Supreme Court provided three reasons to support the *Feres* Doctrine: (1) the parallel private liability required by the FTCA was absent; (2) Congress could not have intended that local tort law governs the "distinctively federal" relationship between the Government and military personnel; and (3) Congress could not have intended to make FTCA claims available to military personnel who have already received veterans' benefits to compensate them for injuries suffered incident to service.

a. Are there any limitations on the *Feres* doctrine that allow an Armed Service member to sue the United States under the Federal Tort Claims Act?

Response: Yes.

b. What are these limitations?

Response: Although not under the Federal Tort Claims Act, the National Defense Authorization Act for 2020 created an administrative process for personal injury or death that was caused by "act or omission constituting medical malpractice occurring in a covered military medical treatment facility."

14. **Explain the U.S. Supreme Court's holding in *Maine Community Health Options v. United States*.**

Response: In *Maine Community Health Options v. United States*, health insurance companies relied on the Tucker Act to sue for damages for losses they suffered on policies on the "health benefit exchanges" under the Affordable Care Act. The Supreme Court held that the Patient Protection and Affordable Care Act's "Risk Corridors" statute, which set the formula for payments to insurers for unexpectedly unprofitable plans during the first three years of insurance marketplaces, created a government obligation to pay insurers the full amount of their losses. The Court found that the government's obligation to pay was not suspended even if Congress had not appropriated funds to make the payments.

Senator Josh Hawley
Questions for the Record
Carolyn Lerner
Nominee, Judge for the U.S. Court of Federal Claims

1. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

   a. **Do you agree with that philosophy?**

      Response: I am not familiar with this quote. I can describe the way I would approach every case which would be to first study the underlying facts and parties' arguments, carefully read the relevant statute or regulations, and research and apply applicable Supreme Court or Federal Circuit precedent to the issue at hand without any predetermined notion of how the case should be decided. This is the approach I have previously taken when I have acted as an adjudicator and agency head, and it is the approach I would use if I am confirmed to be a judge on the Court of Federal Claims.

   b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

      Response: See answer to 1a.

2. **What is the standard for exercising each kind of abstention in the court to which you have been nominated?**

   Response**:** The Court of Federal Claims is a court of limited jurisdiction that hears claims for money damages against the federal government. Abstention rarely arises in these cases because the Court only hears cases against the federal government and it would be rare for a case to be filed with concurrent state court issues. If confirmed, and I was presented with a motion for abstention, I would look to Supreme Court and Federal Circuit precedent for guidance.

3. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

   Response: No.

   a. **If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.**

4. What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?

Response: The Supreme Court has looked to the original public meaning of the Constitution in *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008). The Court stated that "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." If I am confirmed as a judge on the Court of Federal Claims, I would follow Supreme Court and Federal Circuit precedent in interpreting consitutional provisions.

5. Do you consider legislative history when interpreting legal texts?

Response: If a case involves the interpretation of a statute and the plain meaning of the statutory text is clear then that ends the analysis. Only if the text is unclear and there is no applicable or analogous precedent, either from the Supreme Court, the U.S. Court of Appeals for the Federal Circuit, or other federal court, would I consider legislative history. If confirmed, I would follow Supreme Court and Federal Circuit guidance regarding the use of legislative history in statutory interpretation. The Court has instructed, "Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it. When presented, on the one hand, with clear statutory language and, on the other, with dueling committee reports, we must choose the language." *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) (quotation marks and citations omitted).

a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?

Response: The Supreme Court has made clear that some types of legislative history are more probative of congressional intent than others. See, e.g., *NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 943 (2017) ("[F]loor statements by individual legislators rank among the least illuminating forms of legislative history.")

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: As a general rule, the laws of foreign nations are not relevant to the interpretation of the Constitution. There are narrow, limited exceptions to this general rule. For example, in *District of Columbia v. Heller*, the Court considered English law when determining the meaning of the terms used in the Second Amendment. 554 U.S. 570, 582 (2008).

6. **Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

   Response: The Court of Federal Claims and the Court of Appeals for the Federal Circuit do not have jurisdiction over criminal cases, and therefore do not have any occasion to interpret the Eigth Amendment. The Federal Circuit does not have a legal standard for capital punisment. The Supreme Court has held that to prevail on such a claim, a claimant must 1) show that the State's chosen method of execution creates a substantial risk of severe pain; 2) there is a showing of feasible and available alternatives that would significantly reduce the risk of severe pain; and 3) that the State has refused to adopt these alternative methods without a legitimate penological reason. *Bucklew v. Precythe*, 139 S. Ct. 1112, 1125 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015).

7. **Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

   Response: Yes. See also Answer to Question 6.

8. **Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

   Response: The Court of Federal Claims and the Court of Appeals for the Federal Circuit do not have jurisdiction over criminal cases. In *Ledford v. United States*, 297 F.3d 1378 (Fed. Cir. 2002), the Federal Circuit held that the court had no jurisdiction over federal habeas claims. The Supreme Court has not recognized a constitutional right to DNA analysis for habeas corpus petitioners. *District Attorney's Office for the Third Judicial Dist. V. Osborne*, 557 U.S. 52, 72-74 (2009).

9. **Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."**

   a. **What do you understand this statement to mean?**

      Response: I understand Justice Scalia's statement to mean that judges should be impartial and make decisions without regard to their personal views about the

result no matter where that result may lead. Assuming this is what Justice Scalia also meant by this statement, I agree with it.

10. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

Response: I understand there has been ongoing debate on the propriety of issuing unpublished orders. However, as a nominee to serve on the Court of Federal Claims, it would not be appropriate for me to state my opinion on the U.S. Court of Appeals for the Federal Circuit's, or any other U.S. Court of Appeals', practices or procedures.

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: Please see response to Question 10(a).

11. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?

Response: The Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction. Neither court adjudicates criminal cases, and judges on those courts do not consider death penalty cases. The Federal Circuit does not have a legal standard for capital punisment.

12. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: The Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction. The Court of Federal Claims only hears monetary claims against the federal government. I am not aware of any binding Federal Circuit precedent on claims involving whether a facially neutral state governmental action is a substantial burden on the free exercise of religion. The

Supreme Court has held that there must be a compelling state interest and be narrowly tailored to that interest when impacting the free exercise of religion. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-532 (1993). *See also Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curium) (addressing COVID gathering restrictions).

13. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Please see answer to Question 12.

14. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: The Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit are courts of limited jurisdiction. The Court of Federal Claims only hears monetary claims against the federal government. I am not aware of any binding Federal Circuit precedent evaluating whether a person's religious beliefs are held sincerely. The Federal Circuit would apply the Supreme Court's precedent if such an issue arose in one of its cases, e.g. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

15. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: My understanding of the holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008) is that the Second Amendment protects an "individual right to possess and carry weapons in case of confrontation." *Id.* at 592. The right is not unlimited, and applies to the types of weapons that were "in common use at the time," not to "dangerous and unusual weapons." *Id.* at 627.

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

16. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: My understanding of that phrase comports with Chief Justice Roberts's statement that *Korematsu* was "gravely wrong the day it was decided," and the Court's finding that *Korematsu* was a mistaken decision.

17. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

Response: As the highest court in the United States, the Supreme Court establishes binding precedents and determines the circumstances under which its precedents are no longer good law. As a lower court judge, it would be my duty to follow what the Supreme Court announces concerning overruling precedent. My views, if any, would not dictate how I would decide a case if the Supreme Court has not overruled its own precedent. If confirmed, I will apply all binding Supreme Court and Federal Circuit precedents.

a. If so, what are they?

Response: Please see my response to Question 17.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: Yes, I will apply all Supreme Court precedent.

18. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: I am not familiar with the quoted statement by Judge Learned Hand. In addition, the Court of Federal Claims is a court of limited jurisdiction,

and has no jurisdiction over antitrust cases. In the unlikely event that an antitrust case were to arise, I would faithfully apply Supreme Court and Federal Circuit precedent.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my response to Question 18.

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: Please see my response to Question 18.

19. Please describe your understanding of the "federal common law."

Response: My understanding of the term "federal common law" is the law that exists in the absence of any controlling statute, and is the law derived from the binding precedents of the courts of appeals and the Supreme Court in the absence of a controlling federal statute. However, the Supreme Court has stated, "[t]here is no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

20. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: The Court of Federal Claims is a court of limited jurisdiction that hears monetary claims against the federal government. If I am confirmed to the Court I would not have occasion to interpret civil rights arising under state constitutional law.

a. Do you believe that identical texts should be interpreted identically?

Response: A state constitutional provision is a matter for the courts of the state and federal courts must defer to those interpretations. *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: The Federal Constitution is binding on the states, and is the "supreme Law of the Land." U.S. Const., art. VI.

21. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954), was correctly decided?

Response: In my current role as Chief Circuit Mediator for the D.C. Circuit, I am bound by the Code of Conduct for United States Judges, and it would normally be inappropriate for me to comment on legal issues that could become the subject of litigation in the federal courts of the D.C. Circuit. In addition, it is generally inappropriate for judicial nominees to comment on the merits of any particular precedent because it is a lower court judge's duty to follow precedent without regard to personal views, and because judges are ethically prohibited from commenting on legal issues that could become the subject of litigation. Prior judicial nominees have made exceptions to that general rule for *Brown v. Board of Education* because litigation regarding the issues in that case is highly unlikely to reoccur. Similarly, I agree that it is appropriate to comment on the merits of *Brown* and state that it was correctly decided. As a lower court judge, if confirmed, I would follow all Supreme Court and Federal Circuit precedent.

22. Do federal courts have the legal authority to issue nationwide injunctions?

Response: The Court of Federal Claims is a court of limited jurisdiction and lacks jurisdiction to enjoin the conduct of parties not before the court on a nationwide basis or otherwise. The defendant is always the federal government. That being said, the scope of proper injunctive relief is currently being litigated in the federal courts, and it would not be appropriate for me as the Chief Mediator for the federal courts in the D.C. Circuit (bound as I am in that position by the Code of Conduct for United States Judges) or as a judicial nominee, to provide a personal opinion on this question. If confirmed, I would apply Supreme Court and Federal Circuit precedent regarding the scope of proper injunctive relief.

a. If so, what is the source of that authority?

Response: Please see answer to Question 22.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Please see answer to Question 22.

23. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see answer to Question 22.

24. What is your understanding of the role of federalism in our constitutional system?

Response: "Federalism" as I understand it is a system of government in which the states and the federal government act as dual sovereigns. Both are equally important to protect liberty. Federalism is a way to prevent any one governmental entity from becoming too powerful and restricting liberty.

25. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: The absention doctrine arises when there is an issue concerning a federal court's interference with state court or administrative proceedings. Various abstention doctrines have developed, such as in *Younger v. Harris*, 401 U.S. 37 (1971) and *Railroad Comm'n v. Pullman*, 312 U.S. 496 (1941). Federal courts will decline to decide a case if it would intrude on the powers of another court. Because the Court of Federal Claims only hears claims against the United States, if confirmed, I would rarely if ever be confronted with a need to apply the abstention doctrine. If a case came before me that raised this issue, I would follow Supreme Court and Federal Circuit precedent.

26. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: The Supreme Court has held that the due process clauses of the Fifth and Fourteenth Amendments to the Constitution protect certain unenumerated rights that are "fundamental" and "deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). Among these rights are the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to parent, *Meyer v. Nebraska*, 262 U.S. 390 (1923); and the right to use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

27. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: The Free Exercise Clause is a fundamental constitutional right. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). Under current Supreme Court precedent, "laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021).

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: No. The Supreme Court has held that "[t]he Free Exercise Clause protects against laws that impose special disabilities on the basis of religious status." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 U.S. 2012, 2021 (2007)

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: Please see my response to Question No. 27(a).

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: The Court of Federal Claims is a court of limited jurisdiction, and it is highly unlikely that a case involving a person's religious beliefs under the First Amendment would come before me if I am confirmed to be a judge on that Court. In the unlikely situation that it did, I would follow Supreme Court precedent on the issue, such as *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The Supreme Court has stated that the "RFRA operates as a kind of super statute, displacing the normal operation of other federal laws." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1754 (2020).

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

28. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: The Court of Federal Claims and the Court of Appeals for the Federal Circuit are courts of limited jurisdiction and do not have jurisdiction over criminal cases. Moreover, if I am confirmed, my personal beliefs on this issue or other issues would be irrelevant. I would follow Supreme Court and Federal Circuit precedent regarding any matter that came before me. I am not aware of any Supreme Court precedent that includes a percentage for determining the reasonable doubt standard.

29. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: I am not familiar with this quote by Justice Holmes. I am aware of *Lochner v. New York*, the holding of which Justice Holmes apparently disagreed. My understanding is that the era typified by *Lochner* ended in the 1930's, *see, e.g. West Coast Hotel Company v. Parrish*, 300 U.S. 379 (1937), and the Supreme Court no longer follows the holding in that case.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: Any opinion that I might have about the holding in *Lochner* would not impact my rulings if I am confirmed to the Court of Federal Claims. I would be obligated to follow Supreme Court and Federal Circuit precedent.

30. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

Response: The Court of Federal Claims and the Court of Appeals for the Federal Circuit are courts of limited jurisdiction and do not have jurisdiction over criminal cases, including writs of habeas corpus. In addition, I am not aware of any cases addressing the situation presented in this question. If I am confirmed, my personal beliefs on this issue or other issues would be irrelevant. Rather, I would follow Supreme Court and Federal Circuit precedent regarding any matter that came before me.

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

Response: Please see my response to Question No. 30(a).

c. If you disagree with either of these statements, please explain why and provide examples.

Response: Please see my response to Question No. 30(a).

c. If confirmed, would you treat unpublished decisions as precedential?

Response: Federal Rule of Appellate Procedure 32.1(a) provides that a court of appeals may not prohibit a party from citing an unpublished opinion of a federal court for its persuasive value or for any other reason, nor may it restrict the citation of such opinions. If confirmed, I would treat unpublished decisions as non-binding authority, and follow Federal Circuit guidance on how it would expect the Court of Federal Claims to weigh its value. I would neither discourage or prohibit litigants from citing unpublished opinions.

d. If not, how is this consistent with the rule of law?

Response: Please see my response to Question No. 30(c).

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: See Answer to Question 30(c).

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: See Answer to Question 30(c).

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: See Answer to Question 30(c).

31. In your legal career:

a. How many cases have you tried as first chair?

b. How many have you tried as second chair?

c. How many depositions have you taken?

d. How many depositions have you defended?

e. How many cases have you argued before a federal appellate court?

f. How many cases have you argued before a state appellate court?

g. How many times have you appeared before a federal agency, and in what capacity?

h. How many dispositive motions have you argued before trial courts?

i. How many evidentiary motions have you argued before trial courts?

Response to subparts a.- i.: I was a litigator in private practice for 20 years. I left my law firm over ten years ago, and I no longer have access to my case files. I tried two cases to verdict before juries and six cases before administrative law judges. I took and defended dozens of depositions. I recall arguing motions in federal appellate court fewer than five times, and do

not recall arguing before a state appellate court although it is possible that I did so. I appeared before federal agencies numerous times as a litigator, and headed a federal agency for six years where I was responsible for litigation decisions. I estimate that I have argued at least ten dispositive and ten evidentiary motions before trial courts or administrative judges.

32. If any of your previous jobs required you to track billable hours:

Response: When I was in private practice I recorded my billable hours.

a. What is the maximum number of hours that you billed in a single year?

Response: I left private practice over ten years ago and do not have access to my former billing records.

b. What portion of these were dedicated to pro bono work?

Response: Throughout my legal career I have been dedicated to pro bono work. While I do not have my former billing records, a significant portion of my time was devoted to providing pro bono services including serviceas a member of the D.C. Bar's Pro Bono Committee, the D.C. Circuit's Committee on Pro Bono, and volunteering through the D.C. Bar's Legal Advice and Referral Clinic, among other organizations.

33. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I understand Chief Justice Roberts's statement to mean that judges should be impartial and make decisions based on the law and facts before them, and do not have the authority to make the laws.

b. Do you agree or disagree with this statement?

Response: Assuming this is what Justice Roberts also meant by this statement, I agree with it.

34. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I understand Justice Holmes's statement to mean that a judge's job is to faithfully apply the law as set out in statutes and as interpreted by higher courts regardless of their own personal views. This is fundamental to the administration of justice.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: Assuming this is what Justice Holmes also meant by this statement, I agree with it.

35. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: The answer to this question depends on the facts and circumstances of the matter at issue, and the type of damages that are being requested by the plaintiff. In general, damages are awarded to remedy harm that has occurred, and injunctive relief is awarded to prevent future harm.

36. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

Response: No.

a. If yes, please provide appropriate citations.

37. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: No.

38. What were the last three books you read?

Response: *Difficult Conversations*, by Douglas Stone, Brue Patton and Sheila Heen of the Harvard Negotiation Project; *Carville's Cure*, by Pam Fessler; and *A Promised Land*, by Barack Obama.

39. Do you believe America is a systemically racist country?

Response: I do not have a personal definition of "systemic racism," and it is not a term I have used in my legal practice. If confirmed as a judge, I will treat all those who appear before me equally, fairly, and with respect.

40. What case or legal representation are you most proud of?

Response: When I headed the U.S. Office of Special Counsel, the agency's work with Veterans Affairs (VA) whistleblowers improved the quality of care for veterans nationwide. In numerous reports to the President and Congress, I documented a pattern of serious threats to patient care at VA hospitals throughout the country. This led to an overhaul of the VA's internal medical oversight office, as well as other systemic changes at the VA. OSC also secured relief for dozens of VA whistleblowers, helping courageous doctors, nurses, and other VA employees, while addressing ongoing threats to patient health and safety.

41. Have you ever taken a position in litigation that conflicted with your personal views?

Response: No.

a. How did you handle the situation?

Response: See response to Question 41.

b. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

42. What three law professors' works do you read most often?

Response: I do not regularly read any particular law professor's works. However, in my current roles as Chief Circuit Mediator for the federal courts in the D.C. Circuit and as an adjunct law professor at Georgetown University Law Center, I often review articles from the Harvard Project on Negotiation.

43. Which of the Federalist Papers has most shaped your views of the law?

Response: My views of the law have not been shaped by any particular *Federalist Paper*.

44. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: I cannot recall having read any particular judicial opinion, law review article or other legal opinion that made me change my mind. I regularly review the decisions from the federal courts in the D.C. Circuit and generally find them to be well-reasoned and persuasive.

45. Do you believe that an unborn child is a human being?

Response: In *Planned Parenthood of S.E. Pennsylvania v. Casey*, the Court stated: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." 505 U.S. 833, 851 (1992). As a judicial nominee, and in my current role as the Chief Circuit Mediator for the federal courts in the D.C. Circuit, I am bound by the Code of Judicial Ethics, and it would not be appropriate to share my own personal views on whether an unborn child is a human being. If confirmed, I would follow Supreme Court and Federal Circuit precedent on this and all other issues.

46. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: I testified numerous times before congress in my role as head of the U.S. Office of Special Counsel. A list of my testimony is below. The transcripts of the hearings were provided with my answers to the Senate Judiciary Committee Questionnaire for Judicial Nominees.

H. Comm. on Oversight and Government Reform Hearing on Transparency at TSA, 115th Congress (2017) (testimony given as Special Counsel).

S. Comm. on Homeland Security & Governmental Affairs Hearing on the Nominations of Michael J. Missal and Carolyn N. Lerner, 114th Congress (2016) (testimony given as nominee for Special Counsel).

H. Comm. on Oversight and Government Reform Hearing on the Merit Systems Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization Before the Subcomm. on Government Operations, 114th Congress (2015) (testimony given as Special Counsel).

S. Comm. on Veterans' Affairs Hearing on Pending Health and Benefits Legislation, 114th Congress (2015) (testimony given as Special Counsel).

S. Comm. on Homeland Security and Governmental Affairs Hearing on Improving VA Accountability: Examining First-Hand Accounts of Department of Veterans Affairs Whistleblowers, 114th Congress (2015) (testimony given as Special Counsel)..

S. Comm. on Appropriations Hearing on A Review of Whistleblower Claims at the Department of Veterans Affairs Before the Subcomm. on Military Construction, Veteran Affairs and Related Agencies, 114th Congress (2015) (testimony given as Special Counsel).

S. Comm. on Veterans' Affairs Hearing on Pending Health and Benefits Legislation, 114th Congress (2015) (testimony given as Special Counsel).

S. Comm. on the Judiciary Hearing on Juvenile Justice Grants Oversight, 114th Congress (2015) (statement given as Special Counsel)..

H. Comm. on Veterans' Affairs Hearing on Addressing Continued Whistleblower Retaliation within the VA Before the Subcomm. on Oversight and Investigations, 114th Congress (2015) (testimony given as Special Counsel).

H. Comm. on Oversight and Government Reform Hearing on Examining the Administration's Treatment of Whistleblowers Before the Subcomm. on Federal Workforce, U.S. Postal Service and the Census, 113th Congress (2014) (testimony given as Special Counsel).

H. Comm. on Oversight and Government Reform Hearing on White House Office of Political Affairs: Is Supporting Candidates and Campaign Fundraising an Appropriate Use of a Government Office?, 113th Congress (2014) (testimony given as Special Counsel).

H. Comm. on Veterans' Affairs Hearing on VA Whistleblowers: Exposing Inadequate Service Provided to Veterans and Ensuring Appropriate Accountability, 113th Congress (2014) (testimony given as Special Counsel).

H. Comm. on Oversight and Government Reform Hearing on Whistleblower Reprisal and Management Failures at the Chemical Safety Board, 113th Congress (2014) (testimony given as Special Counsel).

S. Comm. on Homeland Security & Governmental Affairs Hearing on Examining the Use and Abuse of Administratively Uncontrollable Overtime at the Department of Homeland Security Before Subcomm. on the Efficiency and Effectiveness of

Federal Programs and the Federal Workforce, 113th Congress (2014) (testimony given as Special Counsel).

S. Comm. on Homeland Security & Governmental Affairs Hearing on Examining the Use and Abuse of Administratively Uncontrollable Overtime at the Department of Homeland Security Before Subcomm. on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, 113th Congress (2013) (testimony given as Special Counsel).

H. Comm. on Oversight and Government Reform Hearing on Abuse of Overtime at DHS: Padding Paychecks and Pensions at Taxpayer Expense Before Subcomm. on National Security, 113th Congress (2013) (testimony given as Special Counsel)..

S. Comm. on Homeland Security & Governmental Affairs Hearing on Strengthening Government Oversight: Examining the Roles and Effectiveness of Oversight Positions within the Federal Workforce Before Subcomm. on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, 113th Congress (2013) (testimony given as Special Counsel).

S. Comm. on Veterans' Affairs Hearing on Pending Benefits Legislation, 113th Congress (2013) (testimony given as Special Counsel).

H. Comm. on Oversight and Government Reform Hearing on Hatch Act: Options for Reform Before Subcomm. on the Federal Workforce, U.S. Postal Service, and Labor Policy, 112th Congress (2012) (testimony given as Special Counsel).

S. Comm. on Homeland Security & Governmental Affairs Hearing on A Review of the Office of Special Counsel and Merit Systems Protection Board Before Subcomm. on Oversight of Government Management, the Federal Workforce, and the District of Columbia, 112th Congress (2012) (testimony given as Special Counsel).

H. Comm. on Armed Services Hearing on Dover Port Mortuary (closed session), 112th Congress (2011) (testimony given as Special Counsel).

S. Comm. on Homeland Security & Governmental Affairs Hearing on the Nomination of Carolyn N. Lerner to be Special Counsel, Office of Special Counsel, 112th Congress (2011) (testimony given as nominee for Special Counsel).

47. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

b. The Supreme Court's substantive due process precedents?

c. Systemic racism?

d. Critical race theory?

Response: No.

48. Do you currently hold any shares in the following companies:

a. Apple?

b. Amazon?

c. Google?

d. Facebook?

e. Twitter?

Response: No.

49. Have you ever authored or edited a brief that was filed in court without your name on the brief?

a. If so, please identify those cases with appropriate citation.

Response: No.

50. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: No.

51. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: I believe that the Senate has an important role in advising and consenting to judicial nominees. Therefore, I believe a nominee should be as candid as possible

about her views, subject to the concerns of judicial ethics that numerous nominees of presidents of both parties have expressed to this Committee.

Questions for the Record for Carolyn Lerner
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

Carolyn Nancy Lerner, Nominee for the United States Court of Federal Claims

1. How would you describe your judicial philosophy?

Response: I currently serve as the Chief Circuit Mediator for the federal courts in the D.C. Circuit. In that role, as in my prior roles as an adjudicator and agency head, my approach has been to make sure that every party is treated fairly and with respect. I review the parties' factual arguments carefully, ask clarifying questions, and apply the relevant law, rule or regulation to impartially make a decision, or in the case of a mediation, to provide the parties with an assessment of the strengths and weaknesses of their cases should they request that I do so. This would be my approach if I am confirmed to be a judge on the Court of Federal Claims.

2. What sources do you turn to when deciding a case involving constitutional provisions?

Response: I would begin by closely considering the text of the constitutional provision. If the meaning is clear from the plain language, then the analysis would end there. If it is not clear, I would consider Supreme Court and Federal Circuit precedent applying the constitutional provisions. If there is no binding precedent, I would look for guidance from other Circuit courts that had interpreted the constitutional provision. In the rare case that there is no applicable precedent, I would refer to other sources accepted by the Supreme Court and the Federal Circuit for constitutional interpretation.

3. 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 begin by closely considering the text of the statute. If the meaning is clear from the plain language, then the analysis would end there. If the plain meaning is not clear, I would consider Supreme Court and Federal Circuit precedent regarding the statute. If I am confirmed, my role would be to follow Supreme Court and Federal Circuit precedent concerning the appropriate method of interpreting the text and how much weight to give the plain meaning of the text.

4. Does plain meaning of a statute refer to the public understanding of the relevant language at the time of the enactment, or does the meaning changes as social norms and linguistic conventions evolve?

Response: The term "plain meaning" of a statute or constitutional provision has been explained by the Supreme Court as "the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738 (2020). If I am confirmed, I would follow Supreme Court and Federal Circuit precedent interpreting statutes and constitutional provisions.

5. What are the requirements for standing in the Court of Federal Claims?

Response: Standing in the Court of Federal Claims is determined in the same way as it would be in an Article III court. First, the plaintiff must have suffered an "injury in fact" - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical[.]'" Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

In the context of bid protests, the Court of Federal Claims "shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement." 28 U.S.C. Section 1491(b)(1). To meet the "interested party" standard for standing under Section 1491 (b)(1), the plaintiff must be an "actual or prospective bidder" and demonstrate that it possesses a direct economic interest in the contract award. *Sys. Application & Tech., Inc. v. United States*, 691 F.3d 1374, 1382 (Fed. Cir. 2012).

6. What role does precedent play in the opinions of a Federal Claims judge?

Response: Precedent in the Court of Federal Claims plays the same role as it would play in an Article III court. Judges on the Court of Federal Claims must follow Supreme Court and Federal Circuit precedent, and its predecessor, the Court of Claims.

7. What legal experience do you think is necessary for a person to make a good Federal Claims judge, and what have you done to gain this experience?

Response: I believe a background in federal court litigation and experience with claims involving the government are the types of legal experience necessary for an effective Court of Federal Claims judge. In my 30 years of legal experience and public service, I have litigated cases on behalf of individuals suing the United States, and represented the government in enforcement actions involving virtually every agency and department in the executive branch. I have broad familiarity with the types of cases heard by the Court of Federal Claims including breach of contract, civilian and military pay cases, and constitutional claims against the government.

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

Response: A judge should treat all those who appear before her with kindness, dignity and respect.

9. The Court of Federal Claims has been called "the keeper of the Nation's conscience" and the "People's court." How do you see the court fulfilling such a role?

Response: When the Court of Federal Claims was established in the 1855, Abraham Lincoln explained the necessity of the Court by stating: "It is as much the duty of Government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals." The Court of Federal Claims' primary purpose is to allow citizens to seek justice against the government. The Court can fulfill its role by promptly and fairly deciding cases that come before it.

QUESTIONS FOR THE RECORD
JONATHAN KANTER
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OF THE ANTITRUST DIVISION

QUESTIONS FROM SENATOR GRASSLEY, RANKING MEMBER

1. You have often criticized the "consumer welfare standard," the dominant approach to modern antitrust enforcement in the United States. In a 2017 speech at the Federalist Society's National Lawyers Convention, you suggested that using the standard "sounds like judicial activism," and that the Justice Department's goal "is not to decide what is maximally efficient" but instead is to "enforce the law."

    a. Please describe in detail why you believe the consumer welfare standard is inadequate and the analytical approach you would prefer courts to adopt.

    RESPONSE: In the past, I have voiced concerns that the application of the consumer welfare standard has been inconsistent, vague, and insufficient to keep pace with market realities. Effective antitrust enforcement requires a deep understanding of market realities and facts to determine whether the conduct at issue harms competition and the competitive process. Enforcement authorities should use state-of-the-art analytical tools to analyze key facts and empirical evidence with the aim of protecting competition and the competitive process.

    b. Can courts be tasked with determining the optimal amount of competition within an industry without engaging in judicial activism? Why or why not?

    RESPONSE: Courts can engage in activism by imposing their own subjective views of economics to address questions of law rather than using economics and other tools to address questions of fact.

2. Should antitrust laws be used to promote wage equality? Why or why not?

    RESPONSE: Antitrust enforcement is essential to promoting a healthy, competitive economy, which can lead to a wide range of benefits, including better wages, benefits, and other terms of employment for workers.

3. Should antitrust laws be used to strengthen labor rights? Why or why not?

    RESPONSE: The effective enforcement of the antitrust laws can lead to more competitive markets, including labor markets. Healthy and competitive markets yield a wide range of benefits for many stakeholders, including small business owners, farmers, and workers.

4. In a highly concentrated market, if breaking up one or more of the dominant firms would make consumers worse off, should the firm(s) be broken up? Please explain.

RESPONSE: Antitrust remedies are fact specific and should be tailored to address the underlying violation of the law. In some instances, structural remedies may be necessary. In other instances, behavioral remedies may be necessary. As a general matter, structural remedies are the most common remedies imposed by antitrust enforcement agencies and are frequently used to address violations of the Clayton Act because they are "simple, relatively easy to administer, and sure." *See United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 331 (1961).

5. The market size and power of Big Tech companies like Google and Facebook has enabled them to exert substantial control over how Americans obtain and share information. With alarming frequency, these companies use their power to censor conservative political viewpoints or search results on their platforms. If you are confirmed, and assuming no changes to the current antitrust laws, what steps will you take to stop Big Tech companies from censoring political viewpoints they don't like?

RESPONSE: Vigorous and effective antitrust enforcement in markets affecting the political discourse can promote competition in the marketplace of ideas.

6. You have represented many companies and interests that have advocated for more aggressive antitrust enforcement against Big Tech. Before the recent DOJ and FTC cases against Google and Facebook, the federal government had not brought a major antitrust case against a Big Tech company since the Microsoft case over 20 years ago. Do you believe that there has been lax enforcement by the agencies or does Congress need to pass additional laws for effective antitrust oversight of Big Tech companies?

RESPONSE: I defer to Congress regarding the need for clarification or modifications to our existing antitrust laws.

7. What is the role of data in the digital economy?

RESPONSE: Effective antitrust enforcement should address the full range of competitive harm in markets involving the extraction and use of data. These include, among other things, harms related to privacy, innovation, resiliency of technology infrastructure.

8. Most Big Tech companies offer products that are either free or low cost to consumers. They are able to utilize this business model by monetizing the data of their users in order to sell advertisements. Traditionally, price has been one of the main factors that agencies and courts look at for competition.

    a. Do you believe that it is more difficult to bring antitrust cases against Big Tech companies because their products are generally free to use?

RESPONSE: As a theoretical matter, the antitrust laws as written by Congress should be sufficient to address products that are free to consumers. Modern technology companies have redefined many aspects of our economy, which may necessitate the development and use of new analytical tools to fully understand and address competitive harms.

b. Should other factors such as data and privacy be taken into account when looking at possible competitive harms?

RESPONSE: Data and privacy are directly related to the core business models of many tech companies. As a result, harm to user privacy may be an actionable competitive harm.

9. If you are confirmed, how do you plan to coordinate the Justice Department's antitrust enforcement efforts with the Federal Trade Commission?

RESPONSE: It is important for enforcement authorities to collaborate when necessary to ensure the most efficient and effective use of resources. This includes collaboration regarding the development of policy positions and regarding enforcement when appropriate.

10. On September 15, the FTC voted 3-2 on party lines to rescind the Vertical Merger Guidelines (VMGs) which were issued jointly with the DOJ in June 2020. It is my understanding that currently the DOJ is still operating under the 2020 VMGs. I recently sent a letter, with Antitrust Subcommittee Ranking Member Mike Lee as well as House Judiciary Committee Ranking Member Jim Jordan and Antitrust Subcommittee Ranking Member Ken Buck, to the FTC Chair and the DOJ Acting Assistant Attorney General for Antitrust expressing concerns over the application of increasingly divergent standards of review to mergers and acquisitions. If you are to be confirmed how will you ensure that the DOJ and FTC will be consistent in their application of merger review?

RESPONSE: If confirmed, I look forward to working with career attorneys at the Department of Justice to assess whether changes are necessary to the 2020 Vertical Merger Guidelines. As part of that process the Department of Justice should collaborate with the FTC to undertake a rigorous and thoughtful examination.

11. As I mentioned during your hearing before the Senate Judiciary Committee, I am very concerned with the rising cost of prescription drugs. The Justice Department has an important role to play in ensuring that drug companies do not engage in anti-competitive practices or monopolistic behavior. If you are confirmed to lead the Antitrust Division, what steps will you take to make sure that both brand name and generic drug companies play by the rules?

RESPONSE: Affordable pharmaceuticals and quality healthcare are of the utmost importance. Enforcement authorities should vigorously enforce the antitrust laws to protect competition in these industries.

12. I also have concerns about increased agribusiness concentration, reduced market opportunities, and fewer competitors in the agriculture sector. I worry about the potential for increased anti-competitive business practices in agriculture. Right now, there are a number of mergers occurring in the agriculture sector that could completely change the market and impact the agriculture industry and consumers. I believe that the Justice Department's Antitrust Division needs to dedicate more time and resources to agriculture competition issues. If you are confirmed, can you assure me that agriculture antitrust issues will be a priority for the Antitrust Division?

RESPONSE: Concentration hurts the agricultural economy and the freedom of individual farmers. If I am confirmed, protecting competition in agriculture will be a high priority. The Antitrust Division would benefit from additional funding so that it can devote additional resources to these extremely important issues.

13. I believe that the Justice Department and the Department of Agriculture, which enforces the Packers and Stockyard Act, should collaborate and work together to monitor anti-competitive activity in the agriculture industry. If you are confirmed, will you commit to foster a closer and more productive relationship with the Department of Agriculture?

RESPONSE: If confirmed, I look forward to a close and productive working relationship with the Department of Agriculture.

14. I am concerned with Pharmacy Benefit Managers, also known as PBMs, and the possible negative effects they are having on prescription drug prices for consumers. PBMs operate with little to no transparency making it very difficult, if not impossible, to understand prescription drug prices. Today we have a complex web of list prices, rebates, and formularies that makes it near impossible to understand drug pricing. This problem is made worse by the consolidation and concentration of the PBM marketplace.

    a. Do you believe that there is anticompetitive conduct that is occurring in the PBM marketplace leading to higher costs for consumers?

    RESPONSE: Because I am not yet at the Department, I will refrain from providing comments regarding potential enforcement matters. Enforcing the antitrust laws in markets that affect drug prices is of the utmost importance and I will make it an important priority if I am confirmed.

    b. Has there been too much concentration leading to very few companies with too much power?

    RESPONSE: As a general matter, too much power in the hands of too few raises significant concerns.

c. Should PBMs be required to provide more transparency into how prescription drugs are priced?

RESPONSE: Because I am not yet at the Department, I will refrain from providing comments regarding potential enforcement matters. Enforcing the antitrust laws in markets that affect drug prices is of the utmost importance and will be an important priority if I am confirmed. To the extent there are violations, remedies must be sufficient to address the anticompetitive harm. In some instances, effective remedies may involve requirements for greater transparency.

d. If confirmed, will you take a look at PBMs and possible anticompetitive practices?

RESPONSE: Enforcing the antitrust laws in markets that affect drug prices is of the utmost importance and will be an important priority if confirmed.

15. I have introduced the No Oil Producing and Exporting Cartels Act the last few Congresses to help combat high gas prices. This legislation would give the administration the authority to hold OPEC accountable for anticompetitive conduct such as market manipulation and collusion. Your predecessor, Makan Delrahim, was supportive of this legislation.

a. Are you supportive of this legislation?

RESPONSE: If confirmed, I would want to thoroughly evaluate this legislation with the benefit of the views of others within the Antitrust Division. I understand it is customary for the Antitrust Division to provide technical assistance to Congress and, in some instances, provide input regarding competition policy. If confirmed, I look forward to working with the Department's Office of Legislative Affairs and your office to provide further assistance with respect to this legislation in response to your requests.

b. Will you commit to working with me to hold OPEC accountable and deliver lower gas prices to American consumers?

RESPONSE: The antitrust laws seek to prevent harmful collusion among competitors, such as coordination to restrict supply or manipulate prices. Higher gas prices take money out of the wallets of hundreds of millions of American consumers. At the same time, I recognize that there are foreign policy implications for how the United States addresses OPEC, which must be carefully weighed as well. If confirmed, I look forward to working with the Department's Office of Legislative Affairs in response to any requests for assistance from your office.

16. Could you discuss your general philosophy with respect to the intersection of intellectual property and antitrust? What challenges do you see for the Antitrust Division in this area?

RESPONSE: Antitrust law is capable of addressing conduct in markets involving intellectual property rights. At the same time, antitrust law enforcement authorities must consider the ability of legitimate rightsholders to exercise their intellectual property rights, subject to the limitations of existing law.

17. Please list the dates of and describe all interviews or communications you had with the White House or the Justice Department regarding your nomination.

RESPONSE: In April 2021, the White House Office of Presidential Personnel contacted me regarding a possible nomination for Assistant Attorney General. I then took part in the Presidential Personnel Office's screening and vetting process. On July 20, 2021, I was informed that the President intended to nominate me for the position, which he did on July 22, 2021.

18. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

    a. Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

    RESPONSE: No.

    b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?

    RESPONSE: No.

    c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?

    RESPONSE: No.

19. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."

    a. Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

RESPONSE: No.

b. Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

RESPONSE: No.

c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

RESPONSE: No.

20. Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."

a. Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

RESPONSE: No.

b. 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.

RESPONSE: No.

c. Are you currently in contact with anyone associated with Arabella Advisors? 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.

d. Have you ever been in contact with anyone associated with Arabella Advisors? 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.

21. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."

a. Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

RESPONSE: No.

b. Are you currently in contact with anyone associated with the Open Society Foundations?

RESPONSE: No.

c. Have you ever been in contact with anyone associated with the Open Society Foundations?

RESPONSE: No.

22. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."

a. Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

RESPONSE: No.

b. Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

RESPONSE: No.

c. Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

RESPONSE: No.

23. Please describe the selection process that led to your nomination, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

RESPONSE: In April 2021, the White House Office of Presidential Personnel contacted me regarding a possible nomination for Assistant Attorney General. I then took part in the Presidential Personnel Office's screening and vetting process. On

July 20, 2021, I was informed that the President intended to nominate me for the position, which he did on July 22, 2021.

24. During your selection process did you communicate 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, not that I am aware of.

25. During your selection process did you communicate 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, not that I am aware of.

26. During your selection process, did you communicate 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, not that I am aware of.

27. During your selection process did you communicate 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, not that I am aware of.

28. Please explain, with particularity, the process whereby you answered these questions.

RESPONSE: Attorneys from my law firm, as well as Department of Justice attorneys, assisted me in preparing initial draft responses to questions from the Committee. I maintained complete editorial control throughout the process and the final answers reflect my views alone.

QUESTIONS FOR THE RECORD
JONATHAN KANTER
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OF THE ANTITRUST DIVISION

QUESTIONS FROM SENATOR BLACKBURN

1. The FTC and DOJ often cover similar issues in the antitrust space, and there is seemingly significant overlap between the agencies when it comes to antitrust enforcement. How do you propose to define the Dept. of Justice's authority here?

   RESPONSE: It is ultimately up to Congress how to allocate jurisdiction among federal antitrust enforcement authorities. If confirmed, I will focus on vigorous enforcement of the antitrust laws with the authority that Congress has allocated to the Department of Justice.

2. There is increasing evidence that Chinese companies are threatening to dominate wireless telecommunication standards and are engaging in widespread hold-out practices aimed at free-riding on the patented technologies of American technology companies, threatening the continued leadership of the United States in the wireless telecommunications field. Under your leadership, will the Antitrust Division enforce antitrust laws to protect American markets and the national security of the United States from anti-competitive conduct by Chinese telecommunications product manufacturers?

   RESPONSE: Timely and effective antitrust enforcement allows the United States to continue its deep tradition of innovation. Chinese telecommunications product manufacturers, like any company, are subject to the antitrust laws when they do business with the relevant legal nexus to the United States. If confirmed, I will commit to vigorously enforcing the antitrust laws against any companies that violate them, without fear or favor.

3. You have represented Microsoft, Yelp, and smaller technology companies in litigation against Google, and at other times, you have advocated for enforcement actions against the company. If you are confirmed, Google will likely seek your recusal from any potential enforcement actions the DOJ brings against them. How would you respond to these requests for your recusal?

   RESPONSE: If confirmed, I will consult with appropriate ethics officials at the Department of Justice.

4. I understand the cable news network Newsmax was recently suspended from YouTube for sharing an interview with Senator Rand Paul, who is a medical doctor, in which Senator Paul expressed his views on the effectiveness of masks. The views of a US

Senator on a public policy issue would seem to be legitimate news content. In your view: (1) Can Section 230 of the Communications Decency Act be used to deplatform based on political disagreement with the views expressed? (2) Can Section 230 be used to anticompetitively deplatform potential competitors?

RESPONSE: I believe Section 230 of the Communications Decency Act raises important questions regarding competition policy. The application of Section 230 in any specific matters depends on a full investigation of the facts.

QUESTIONS FOR THE RECORD
JONATHAN KANTER
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OF THE ANTITRUST DIVISION

QUESTIONS FROM SENATOR COTTON

1. Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?

   RESPONSE: No.

2. Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?

   RESPONSE: No.

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

   RESPONSE: Attorneys from my law firm, as well as Department of Justice attorneys, assisted me in preparing initial draft responses to questions from the Committee. I maintained complete editorial control through the process and the final answers reflect my views alone.

4. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.

   RESPONSE: Attorneys from my law firm, as well as Department of Justice attorneys, assisted me in preparing initial draft responses to questions from the Committee. I maintained complete editorial control through the process and the final answers reflect my views alone.

QUESTIONS FOR THE RECORD
JONATHAN KANTER
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OF THE ANTITRUST DIVISION

QUESTIONS FROM SENATOR CRUZ

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. If confirmed, what will your top priorities be for the Department of Justice Antitrust Division?

   RESPONSE: If confirmed, my top priority will be to protect competition through sound enforcement of the antitrust laws. I will work to ensure that the investigatory tools and analytical frameworks the Division uses are sufficient to address the market realities of the modern economy.

2. When we met in my office, I explained my belief that big tech is the greatest threat to democracy because they control the flow of information. They can ban or throttle speech they don't like and shut down newspapers like the *New York Post* for publishing stories that don't fit the approved narratives of government officials, politicians, and a handful of Silicon Valley billionaires. You agreed with me that antitrust has a role to play in addressing these harms.

   a. If confirmed, will you treat big tech censorship and its burden on the free exchange of ideas as an antitrust harm?

      RESPONSE: Concentration of economic power is particularly concerning in markets related to the flow of news and information that impact political discourse. When appropriate, antitrust enforcement can protect competition in these markets, which are vital to the free exchange of information, news, and ideas, and to a healthy and functioning democracy.

   b. Will you examine how tech companies use their market power in online platforms to censor political viewpoints, speakers, and publishers that they disagree with?

      RESPONSE: If confirmed, I will fight to address antitrust violations that harm the marketplace of ideas.

   c. How can antitrust law help protect Americans' ability to express opinions online?

      RESPONSE: Concentration of economic power is particularly concerning in markets related to the flow of news and information that impact political discourse. When appropriate, antitrust enforcement can protection competition in these markets, which are vital to a healthy and functioning democracy.

3. Both Republicans and Democrats have raised concerns about the role of Big Tech corporations—both search engines like Google and social media sites like Facebook—may operate in such a way that would demonstrate a political bias and potentially impact the outcome of elections. The parties disagree about the political biases at play, but are united in concern about Big Tech interfering in election outcomes.

a. Do you have any reason to disagree that search engine results may have political biases?

RESPONSE: I have not reviewed all relevant evidence to determine whether search engine results have political biases.

b. Do you believe that social media platforms may have political biases in presenting speech on their platforms?

RESPONSE: I have not reviewed all relevant evidence to determine whether social media platforms have political biases.

c. Do you have any reason to disagree that politically biased search results or social media feeds could influence electoral outcomes?

RESPONSE: I have not reviewed all relevant evidence to determine the effects of search results or social media feeds on electoral outcomes.

d. Do you agree that politically-biased adulteration of search engine results or speech on social media sites can manipulate electoral and political outcomes in the United States?

RESPONSE: I have not reviewed all relevant evidence to determine the effects of search engine results or speech on social media sites on electoral outcomes.

e. Can this type of political bias that impacts elections in the United States constitute anticompetitive conduct that is harmful to consumers?

RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. The types of actions that constitute anticompetitive harm are specific to the facts and circumstances of any given case. Anticompetitive harm is not limited to price effects and may include, for example, loss of competition in the marketplace of ideas and interference with the free flow of information that affects political discourse.

4. In your experience and opinion, do Big Tech corporations, such as Google, Facebook, and Twitter, demonstrate pro-liberal or pro-conservative biases in their operations?

RESPONSE: I have not reviewed all relevant evidence to determine the bias or lack thereof for specific corporations. I would need to see and consider the full range of evidence to make a determination.

5. Do you believe that Big Tech censorship of political speech, including conservative speech, constitutes a consumer harm?

RESPONSE: I have not reviewed all relevant evidence to determine whether any specific acts of censorship constitute consumer harm that would be cognizable under the antitrust laws. I would need to see and consider the full range of evidence to make a determination.

6. In October 2020, the Department of Justice and a number of states, including Texas, brought suit against Google under Section 2 of the Sherman Act to restrain Google from "unlawfully maintaining monopolies in the marks for general search services, search advertising, and general text advertising in the United States through anticompetitive and exclusionary practices." Should you be confirmed, will vigorously litigating *United States v. Google* be among your top priorities?

RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. If confirmed, I will fully and faithfully litigate the matters that are necessary to address violations of the antitrust laws.

7. When we spoke in my office, you said that antitrust law requires "empiricism" and "vigor." Some critics of current antitrust doctrine essentially argue that antitrust can be used as a roving authority to enact social policy.

   a. Do you believe that antitrust can be used to combat social issues?

   RESPONSE: Antitrust law protects the competitive process. A healthy and competitive economy can yield a wide range of benefits for all Americans.

   b. If yes, which ones?

   RESPONSE: Strong competition can result in a wide range of benefits for our economy and democracy, including, without limitation, new innovations, opportunities for workers, and a more vibrant marketplace of ideas that impacts the distribution of information that is critical to political discourse.

   c. How can antitrust law address these issues while retaining "empiricism" and "rigor"?

   RESPONSE: Antitrust law enforcement should use state-of-the-art empirical and analytical tools to understand and evaluate facts.

8. State governments have taken a more active role, largely through state Attorney General actions, to address antitrust issues, especially to address perceived abuses by Big Tech. What do you think the appropriate role for state governments should be in the antitrust arena?

RESPONSE: States have long played a critical role in antitrust enforcement. States were the primary antitrust enforcers prior to the Sherman Act in 1890 and many states enshrine antimonopoly principles in their state constitutions. The Texas State Constitution, for example, states that "monopolies are contrary to the genius of a free government, and shall never be allowed." I have the utmost respect for state enforcement, and I would consider it an honor to work alongside state attorneys general and state antitrust enforcement personnel.

9. You have been a vocal critic of the "consumer welfare standard" in antitrust enforcement. For example, in a 2017 speech at a Federalist Society conference, you called the consumer welfare standard "out of step," "limited" and "narrow." At the same event, you explained that, in your view, the goal of the Justice Department "is not to decide what is maximally efficient," but instead is to "enforce the law," and that you do not "want to turn over the keys to antitrust to economists."

   a. If you were to craft a standard for the DOJ's antitrust enforcement, what would it look like? Please describe in detail.

      RESPONSE: First and foremost, antitrust enforcement authorities should follow the facts and the law in each individual case to determine whether the conduct at issue harms competition and the competitive process. Effective antitrust enforcement requires a deep understanding of market realities and facts to determine whether the conduct at issue harms competition and the competitive process. Enforcement authorities should use state-of-the-art analytical tools to assess key facts and empirical evidence.

   b. What role would consumer welfare play in your antitrust enforcement decisions if confirmed to be the Assistant Attorney General of the Antitrust Division?

      RESPONSE: Protecting the welfare of consumers is an important goal of the antitrust laws.

10. If confirmed, how will you work to coordinate antitrust enforcement actions with the FTC?

    RESPONSE: If I am confirmed, I will endeavor to ensure the efficient and proper division of responsibility between the DOJ and FTC, including the avoidance of unnecessary duplication.

11. Do you agree with the FTC's rescission of the Vertical Merger Guidelines, which had been issued jointly in 2020 by the Department of Justice and the FTC's Vertical Merger Commentary?

    RESPONSE: If confirmed, I look forward to working with career attorneys at the Department of Justice to assess whether changes are necessary to the 2020 Vertical Merger Guidelines.

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

RESPONSE: As Assistant Attorney General for the Antitrust Division, it would be my responsibility to help enforce the law; however, an agency "generally cannot act against each technical violation of the statute it is charged with enforcing." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Therefore, an agency must have discretion to carry out its legal duty with limited resources. The Supreme Court has explained that an agency's discretion includes but is not limited to "whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and, indeed, whether the agency has enough resources to undertake the action at all." *Id.*

13. There have been reports of anti-competitive conduct in the aluminum industry. Purchasers of aluminum say they are encountering pricing irregularities and potentially anti-competitive conduct by aluminum producers, merchants, traders, and others. They report that the price of aluminum has increased significantly beyond what it should be in a competitive market, and that as a result, these costs are passed on to consumers. The beverage industry estimates that U.S. beer, soft drink and other consumers have paid hundreds of millions of dollars in the form of excessive inflated aluminum costs in the past year alone due to the artificially high price of aluminum. The "Midwest Premium" (MWP), for example, has reportedly seen a 450% price increase over the last year, despite the fact that the logistical costs of sourcing metal from within the U.S. and around the world has changed minimally until recently.

a. Do you believe that these allegations warrant investigation by the Department of Justice?

RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding potential enforcement matters. If confirmed, I will work with the Department of Justice to enforce the law vigorously in all industries, including aluminum.

b. If you're confirmed, do you plan to examine whether anticompetitive conduct is the cause of undue price increases in the aluminum market?

RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. If confirmed, I will work with the Department of Justice to enforce the law vigorously in all industries, including aluminum.

c. It appears that the ratings agency setting the price of the MWP – Platts – is using bids and offers for aluminum purchases to assess the price of the MWP, rather than actual consummated purchases of aluminum. Some industry observers suspect that this practice of using bids and offers is an inaccurate method of assessing the MWP and is

responsible for the recent price spikes. Will you examine this possible practice as part of any inquiry into aluminum pricing?

RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. If confirmed, I will work with the Department of Justice to enforce the law vigorously in all industries, including aluminum.

d. S&P Global is the owner of Platts, the industry rating source that sets the price of the MWP. S&P Global is seeking to merge with IHS Markit, which also has similar industry commodities ratings services. This transaction is now under review at the DOJ. As part of the resolution of this merger, would you consider a behavioral remedy to prevent Platts from basing its MWP price assessment on bids and offers and compel it to use consummated transactions instead?

RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. If confirmed, I will work with the Department of Justice to enforce the law vigorously and impose remedies that address the underlying violations of the law. A remedy that does not work is not a remedy.

14. There is bipartisan concern about the lack of competition in the meatpacking industry. In 1988, the four largest companies controlled 70 percent of the market. Their share grew to 81 percent of the market in 1999. Today their market share is now at 85 percent. Should you be confirmed, what steps will you take to ensure greater transparency in pricing, enhanced market competition, and more negotiation between meat producers and meat packers?

RESPONSE: The agricultural industry is critical to the economy and health of our nation. Our federal and state antitrust enforcement authorities have undertaken important work in this area. If I am confirmed, I will work to ensure that this remains a high priority for the Antitrust Division.

15. The DOJ's Antitrust Division launched an investigation into the nation's four largest meatpackers in May 2020. Since then, and despite numerous requests from interested groups who have a stake in the outcome, we have not heard from the DOJ regarding the status of the investigation, the DOJ's findings, or any other updates for that matter. Do you plan to prioritize these investigations?

RESPONSE: Because I am not yet at the Department, I will refrain from providing comments regarding active or potential enforcement matters. If I am confirmed, I will work to ensure that matters related to the agriculture industry remain a high priority for the Antitrust Division.

QUESTIONS FOR THE RECORD
JONATHAN KANTER
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OF THE ANTITRUST DIVISION

QUESTIONS FROM SENATOR HAWLEY

1. Do you think the so-called "consumer-welfare standard," which was developed long before today's digital platforms, is an appropriate framework for the kinds of issues facing competition today?

   RESPONSE: In the past, I have voiced concerns that the application of the consumer welfare standard has been inconsistent, vague, and insufficient to keep pace with market realities.

2. In what specific ways have dominant antitrust theories failed to evolve to capture the phenomena that we're seeing in the tech sector?

   RESPONSE: Effective antitrust enforcement should assess the full range of competitive harm in markets involving the extraction and use of data, including harms related to privacy, innovation, resiliency of technology infrastructure, among many others.

3. What do you suggest as a better way for courts to think about antitrust cases, beyond the current "consumer welfare" approach that either (1) focuses reductively on consumer prices, or (2) ends up being so vague as to be unhelpful?

   RESPONSE: If confirmed, I will focus on further fortifying investigatory tools and market specific expertise to accurately assess and address potential antitrust violations based on actual market realities rather than narrow assumptions.

4. What role do you see for state attorneys general in antitrust enforcement?

   RESPONSE: States have long played a critical role in antitrust enforcement. States were the primary antitrust enforcers prior to the Sherman Act in 1890 and many states enshrine antimonopoly principles in their state constitutions. I have the utmost respect for state enforcement, and I would consider it an honor to work alongside state attorneys general and state antitrust enforcement personnel.

5. If you are confirmed, what steps do you intend to take to ensure that the Division responds to requests for information from congressional Members in a timely fashion?

RESPONSE: Congressional oversight is a critical component of our democracy. If confirmed, I look forward to coordinating with the Office of Legislative Affairs in the Department to respond to requests for information in a timely manner.

6. If you are confirmed, what steps do you intend to take to develop a collaborative working relationship with FTC personnel and avoid duplication of enforcement efforts?

RESPONSE: If I am confirmed, I will commit to ensuring the efficient and proper division of responsibility between the two agencies, including the avoidance of unnecessary duplication.

QUESTIONS FOR THE RECORD
JONATHAN KANTER
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OF THE ANTITRUST DIVISION

QUESTIONS FROM SENATOR 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.

QUESTIONS FOR THE RECORD
JONATHAN KANTER
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OF THE ANTITRUST DIVISION

QUESTIONS FROM SENATOR LEAHY

1. When the Antitrust Division approves a merger with conditions, it is critical that enforcement authorities remain vigilant about ensuring compliance with those conditions. Under your leadership, how will the Division ensure that a merged entity subject to a consent decree remains in compliance with applicable conditions and is not taking steps to unreasonably harm competitors?

   RESPONSE: If confirmed, I look forward to working with the staff at the Department of Justice to ensure full compliance with all applicable remedies and judgments.

QUESTIONS FOR THE RECORD
JONATHAN KANTER
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OF THE ANTITRUST DIVISION

QUESTIONS FROM SENATOR LEE

1. How should antitrust enforcers view state-owned entities when assessing market structure and market power?

   RESPONSE: Effective antitrust enforcement necessitates a complete understanding of ownership structures, operational control, and competitive incentives.

2. As I wrote in my introduction to the new edition of Judge Robert Bork's The Antitrust Paradox, while he was successful in advocating for the consumer welfare standard, Bork's advice on the limits of economic analysis went unheeded. Subsequently, we have had an overcorrection when it comes to the role of economics in antitrust analysis. What do you think is the proper role of economics in antitrust enforcement?

   RESPONSE: Economics is a tool to understand the functioning and competitive dynamics of markets.

3. In our recent antitrust subcommittee hearings, I've advocated for viewing personal data as a form of payment for supposedly "free" online services, and that disregarding harm to one's users could be a reflection of monopoly power. How, in your view, should antitrust lawyers and economists view these concepts?

   RESPONSE: Effective antitrust law enforcement necessitates a full appreciation of market realities and the complete range of potential competitive harm. The extraction and use of data are fundamental to the economic realities of many markets involving online services. As a result, measuring the value of services that consumers receive in response to sacrificing personal data may be necessary to assess harm to consumers and the competitive process. There is a growing body of academic research and analysis in this important area.

4. At your hearing, you advocated for the application of the antitrust laws to labor markets. Beyond basic concepts of monopsony power, what is your legal framework for such an application?

   RESPONSE: Relevant market analysis for antitrust enforcement, including analysis of labor markets is highly fact specific. Sections 1 and 2 of the Sherman Act prohibit coordinated and unilateral anticompetitive conduct, including conduct that harms workers. Similarly, Section 7 of the Clayton Act prohibits mergers and acquisitions

"the effect of which may be substantially to lessen competition, or to tend to create a monopoly."

This may include mergers that enhance monopsony power in a labor market. Anticompetitive conduct in violation of these and other relevant statutes are violations regardless of the market in which they occur, but the application of law will depend on the facts of a specific investigation or case.

5. How does your legal framework for the application of the antitrust laws to labor markets account for the differences between skilled and unskilled labor in the assessment of geographic product markets?

RESPONSE: Relevant market analysis, including analysis of labor markets, is highly fact specific and requires a careful assessment of the market at issue. For example, workers with different skillsets and experience, or ability to relocate or commute, may have different employment options. These factors, among others, may bear on the contours of the relevant labor market.

6. Will your legal framework for the application of the antitrust laws to labor markets consider putative harms to labor markets that are not merger specific (i.e., are a result of or worsened by the merger)?

RESPONSE: No. Section 7 of the Clayton Act, 15 U.S.C. § 18, prohibits mergers and acquisitions "the effect of which may be substantially to lessen competition, or to tend to create a monopoly." A merger that creates or enhances monopsony power in a labor market violates Section 7. While Section 7 reaches only transaction-specific harms, other types of anticompetitive unilateral or coordinated conduct that harms workers may be actionable under Sections 1 or 2 of the Sherman Act.

7. How will your legal framework for the application of the antitrust laws to labor markets account for the role of state and federal labor laws and regulations?

RESPONSE: Antitrust analysis is fact specific and should take into account the existence of regulatory requirements in assessing whether a transaction or conduct violates the antitrust laws.

8. Do you believe that the 2020 vertical mergers guidelines jointly prepared and approved by the Department of Justice and the Federal Trade Commission were effective?

RESPONSE: If confirmed, I look forward to working with the career attorneys at the Department of Justice to assess whether changes are necessary to the 2020 Vertical Merger Guidelines.

9. How should antitrust enforcers and courts balance the rights of intellectual property holders, particularly standard essential patents, with competition concerns?

RESPONSE: Antitrust law enforcement should consider the existence of legitimate intellectual property rights.

10. When, if ever, does the exercise of intellectual property rights cross the line and violate the antitrust laws?

RESPONSE: As a general matter, the presence of intellectual property rights—like other property rights—does not create blanket immunity for rightsholders to engage in conduct that otherwise violates the antitrust laws. At the same time, the antitrust laws respect the existence and exercise of valid intellectual property rights.

11. Are disagreements relating to standard essential patents better resolved through contract law or antitrust law?

RESPONSE: Application of the antitrust laws is highly fact specific and dynamic. Effective antitrust enforcement should reflect a balanced approach that considers the facts of any given dispute.

12. How will you handle clearance decisions with the Federal Trade Commission to ensure that antitrust enforcement does not suffer from bureaucratic infighting and delays?

RESPONSE: If I am confirmed, I look forward to working collaboratively with the Federal Trade Commission to ensure the efficient and proper division of responsibility between the two agencies.

13. How should antitrust enforcers and treat out-of-market efficiency claims?

RESPONSE: As a general matter, courts do not generally recognize out-of-market efficiency claims to mergers and acquisitions that otherwise violate the antitrust laws.

14. What standard will you apply to decide whether or not to issue a Second Request? Will you require a reasonable suspicion that the merger would substantially lessen competition?

RESPONSE: The Antitrust Division Manual explains that staff should draft and seek a Second Request if they believe "that a transaction might raise competitive problems and more information is needed to evaluate it." I would continue to treat that as the operative framework for deciding whether to issue a Second Request.

15. Should antitrust enforcers require merging parties to wait out the entire 30-day period provided for in the HSR Act even after determining that the transaction raises no competition concerns?

RESPONSE: Antitrust enforcers should work efficiently to review pending transactions within applicable HSR waiting periods subject to operational and resource constraints.

16. What factors will you consider in determining whether or not to investigate or seek to unwind a consummated merger?

RESPONSE: Antitrust law enforcement is highly fact specific. There may be instances in which evidence reveals a violation of the Clayton Act, and thus weighs in favor of challenging a consummated merger.

17. Is it ever appropriate for antitrust enforcers to attempt to prevent a merger from closing through means other than a challenge on the merits, such as through delay tactics or procedural tricks?

RESPONSE: Antitrust enforcement authorities should intervene as appropriate based on the facts and the law, to prevent the closing of mergers that violate the law. Agencies should seek information when it is necessary to conduct a legitimate and thorough investigation.

QUESTIONS FOR THE RECORD
JONATHAN KANTER
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OF THE ANTITRUST DIVISION

QUESTIONS FROM SENATOR TILLIS

1. The Antitrust Division under the previous Administration took the view that the policies of the patent laws and the antitrust law are aligned, with the mutual aim of fostering dynamic competition through innovation. However, in June of this year, Acting Assistant Attorney General Richard Powers stated that the Antitrust Division is rethinking its approach to the intersection of antitrust and intellectual property. In that regard:

   a. Do you agree that reliable, predictable, quality patent rights promote vigorous, dynamic competition to the benefit of consumers and that the Antitrust Division should continue to support patent rights as a key driver of innovation and a competitive American economy?

      RESPONSE: Reliable, predictable, and valid patent rights can play a critical role in encouraging innovation and competition. Intellectual property rightsholders should be able to exercise these rights, subject to the limitations of antitrust law and other applicable law.

   b. Do you agree that universities, companies and small inventors that commit time, resources and capital to engage in risky R&D activities to develop the next generation of standards and that seek to be rewarded for their successful innovations to obtain fair and adequate compensation for the use of their patented technologies should be allowed and encouraged to assert their IP rights in good faith without being labeled as "patent trolls" or chilled by threats of antitrust enforcement action or private antitrust litigation?

      RESPONSE: Antitrust law enforcement should consider the ability of rightsholders to exercise their intellectual property rights, subject to the limitations of existing law.

   c. Do you intend to withdraw or revise the 2019 Joint USPTO, NIST and DOJ Policy Statement on Remedies for Standards-Essential Patents subject to Voluntary F/RAND Commitments, and in particular do you intend to change the Antitrust Division's policy, as reflected in that Policy Statement, that antitrust law should not normally play a role in FRAND licensing disputes between SEP holders and potential licensees?

      RESPONSE: If confirmed, I plan to consult with relevant personnel at the Department of Justice and stakeholders at USPTO and NIST to determine whether changes to the policy are necessary and appropriate.

2. The Supreme Court has recognized that private standards can have significant procompetitive advantages but that there need to be procedures that prevent the standard-setting process from being biased or manipulated by members with economic interest in stifling competition in violation of section 1 of the Sherman Act. In that context, are you prepared to enforce Section 1 aggressively to prevent collusive activity by manufacturers of standards-compliant products that subvert the voluntary consensus-based processes of standards development organizations to deprive patent owners of fair and reasonable compensation for their standards-essential patented technologies?

   RESPONSE: Standard setting can yield significant benefits to innovation and the economy. Like any other company or entity, standard-setting organizations and their participants are subject to the antitrust laws. Depending on the facts, enforcement of the antitrust laws may be appropriate to address illegal restraints of trade or monopolization by standard-setting bodies and/or its participants.

3. An issue that is particularly important to me is the relationship between IP theft and competitiveness. Do you believe it is important for there to be confirmed leadership before any drastic changes are made to how this Administration treats patent protections?

   RESPONSE: Antitrust enforcement authorities should undertake a thoughtful, and careful process before making changes.

   a. How will you specifically take into account global competitiveness with China when it comes to evaluating patent policy?

      RESPONSE: Antitrust law enforcement should reflect an assessment of market realities, which may include considerations of widespread intellectual property theft.

4. In the copyright space, the Department of Justice has overseen the music consent decrees that have governed the public performance of music for 80 years. Songwriters and publishers have long argued—and I fully agree— that the consent decrees are outdated – especially for the digital age. Following a lengthy review of the consent decrees, the past administration left the consent decrees with ASCAP and BMI untouched.

   a. What are your thoughts about whether and when it would be appropriate to lift the consent decrees?

      RESPONSE: If confirmed, I will consult with career staff at the Department of Justice and follow relevant ethics guidelines before providing input regarding an active enforcement matter.

   b. Do you believe there should be a free market in music? If not, why not?

      RESPONSE: Open and competitive markets are important in all industries, including music.

c. Wouldn't a truly free market in music licensing encourage innovation?

RESPONSE: Open and competitive markets are important in all industries, including music.

d. What is the rationale for allowing some companies to operate outside of consent decrees but not ASCAP and BMI?

RESPONSE: I am not currently at the Department of Justice and, therefore, cannot speak to the rationale employed by the Department of Justice's Antitrust Division in connection with any enforcement matter.

5. Google and Facebook are two of the most powerful and most influential companies in the world. Both completely dominate their corners of the online service provider market. And more Americans now get their news from Facebook or Google than news publishers. At the same time, Facebook and Google have repeatedly refused to negotiate in good faith with news publishers for their carrying their content on Facebook and Google.

a. What do you plan to do to address monopoly powers generally and particularly those big tech companies that control access to information?

RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. As a general matter, the antitrust laws can play a vital role in protecting competition in markets involving the distribution of news and information.

b. The Copyright Office is undertaking a public study at the request of Congress to evaluate current copyright protections for publishers, and includes an inquiry about a "competition-law-based approach to addressing the relationship between news publishers and online intermediaries…" If confirmed, will you work with the Copyright Office on competition issues, including this notice of inquiry?

RESPONSE: If confirmed, I plan to join the Department of Justice in its efforts to promote sound and effective competition policy, including at the Copyright Office.

6. What is your opinion about whether certain large market players like Google and YouTube have an obligation under antitrust law to make tools that help creators license and protect their content available on equal terms to all creators?

RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. As a general matter, antitrust remedies are highly fact specific. In theory, there may be instances where effective remedies necessitate obligations to license content on nondiscriminatory terms.

7. Parties attempting to conclude a merger will often make commitments that try to address competitive concerns the Division might have. T-Mobile has announced plans to accelerate its timeline for shutting down the legacy Sprint 3G CDMA Network ("CDMA network") to January 1, 2022. I understand that millions of Boost prepaid customers (divested to DISH in the T-Mobile/Sprint merger) currently rely upon the CDMA network for wireless connectivity, including access to 911. This January 1, 2022 shutdown is significantly sooner than the three-year timeline T-Mobile provided to regulators while their merger was under review.

    a. If the Antitrust Division under your leadership concludes that T-Mobile's premature shutdown of the CDMA network is contrary to T-Mobile's commitments and obligations and/or raises competitive concerns, do you commit that the Division will take prompt remedial action?

    RESPONSE: Because I am not yet at the Department of Justice, I will refrain from providing comments regarding active or potential enforcement matters. It is the duty of the Antitrust Division to monitor and enforce compliance with existing consent decrees and final judgments.

8. As you know, competition policy and antitrust enforcement can have important implications for intellectual property policy. Both have the shared goal of encouraging innovation and competition. And a big area right now where more antitrust scrutiny is likely needed is the technology industry—particularly big internet companies. How do you think the Department of Justice should approach antitrust enforcement against what we think of as "big tech"?

    RESPONSE: Appropriate and effective use of antitrust enforcement can address a wide range of competitive harms in tech, including harms related to privacy, innovation, resiliency of technology infrastructure, among many others.

    What do you think of the role of data in the digital economy, and what role does it have in antitrust? Please explain how you define "data" in your response.

    a. If confirmed, how will you encourage the Antitrust Division to approach cross-cutting issues related to data that have antitrust implications but that may also implicate intellectual property, national security, cybersecurity, privacy, and other concerns? For example, interoperability?

    RESPONSE: Data is a broad term and the meaning of the word "data" will vary based on the market and use case. For example, in consumer tech, data may refer to behavioral information. As a general matter, effective antitrust must reflect the full range of competitive harm in markets involving the extraction of data, including harms related to privacy, innovation, security, resiliency, among many others.

9. In your testimony, you ask for adequate funding to complete operations. Would consolidating antitrust efforts under one politically accountable entity, as proposed in the

One Agency Act that Senator Lee and I re-introduced in March help streamline efforts? For example, resources would not be spent combatting different agency viewpoints as happened in *FTC v. Qualcomm*?

RESPONSE: It is important for the Antitrust Division to direct its limited resources to activities that will best promote a competitive economy. It is ultimately up to Congress how to allocate jurisdiction among federal antitrust enforcement authorities, and to fund those authorities so that they can enforce the law effectively.

a. If confirmed, how will you assess what resources are needed by the DOJ's Antitrust Division?

RESPONSE: If confirmed, I plan to work with the expert staff of the Antitrust Division and budgeting officials in the Department of Justice and the Administration more broadly to determine appropriate levels for funding requests.

b. If confirmed, will you track and assess the extent to which DOJ resources are spent coordinating with or negotiating with the FTC, in particular where your antitrust policy positions may differ?

RESPONSE: If confirmed, I will work to assess the Antitrust Division's coordination with the FTC and, if appropriate, takes steps to improve its efficiency and effectiveness.

c. If confirmed, how do you plan to coordinate your actions with the Federal Trade Commission?

RESPONSE: If confirmed, I plan to promote an ongoing and effective dialogue between the Department of Justice and the FTC. As a former FTC lawyer, I am hopeful that my perspective will enhance collaboration between the two agencies.

d. If confirmed, what do you see as your role in domestic and international antitrust policy issues, including with respect to the FTC?

RESPONSE: As an Executive Branch agency responsible for competition, the Department of Justice plays an important role in domestic and international antitrust policy issues. As to domestic competition policy, it is important that the Antitrust Division share its substantial competition policy and industry-specific expertise with other federal agencies. Similarly, with respect to international competition policy, effective enforcement of U.S. antitrust laws in a global economy requires cooperation with competition agencies outside the U.S. If confirmed, I would work with the Antitrust Division to provide guidance, expertise, and U.S. leadership regarding competition policy and law enforcement.

GOVERNOR ARNOLD SCHWARZENEGGER

September 28, 2021

The Honorable Dick Durbin
Chairman, Senate Judiciary Committee
The Honorable Charles Grassley
Ranking Member, Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Judge Lucy Koh to the Ninth Circuit Court of Appeals

Dear Chairman Durbin and Senator Grassley:

More than twelve years ago, I appointed Judge Lucy Koh to be a Superior Court Judge for California's Santa Clara County, the heart of Silicon Valley. I then watched with pride as she excelled in all aspects of her duties and was later confirmed unanimously by the U.S. Senate as a U.S. District Court judge in 2010.

I chose Judge Koh initially based on her many achievements as a federal prosecutor, an attorney for the U.S. Department of Justice, and a litigator in two major law firms. Based on her distinguished service as a state judge, I wrote a letter of endorsement when she was nominated for the federal bench, concluding that she "exemplifies the very best of the legal profession and will be an excellent federal judge" (January 29, 2010). I also noted the breadth and diversity of her support within the legal community in California and nationally.

I wouldn't alter a word of that endorsement now, but I am pleased to add that Judge Koh has since compiled a record in federal criminal and civil matters that is second to none, including some of the most complex civil cases that the information technology industry has produced. I remain a proud supporter of Judge Koh, and I could not be more enthusiastic in my support of her confirmation.

Sincerely,

Arnold Schwarzenegger

3110 MAIN STREET • SUITE 300 • SANTA MONICA • CALIFORNIA 90405

Daniel Levin
1019 Utterback Store Road
Great Falls, VA 22066
September 30, 2021

The Honorable Dick Durbin
Chair, Senate Judiciary Committee
224 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member, Senate Judiciary Committee
224 Russell Senate Office Building
Washington, D.C. 20510

Nomination of Judge Lucy H. Koh to the Court of Appeals for the Ninth Circuits

Dear Chairman Durbin and Ranking Member Grassley:

I am writing to enthusiastically support the nomination of District Court Judge Lucy H. Koh to be a Judge on the Court of Appeals for the Ninth Circuit. I had the privilege of working with Judge Koh when she was an Assistant U.S. Attorney in the Central District of California. We have remained friends since and I have followed her judicial career with great interest. Judge Koh has a brilliant legal mind, is incredibly hard working, has tremendous integrity, and is a wonderful person: warm, caring, and with a terrific sense of humor. She is exactly what everyone should want in a Judge: smart, hard-working, fair and with no agenda other than reaching the correct result and a terrific judicial demeanor.

I have had the opportunity to work with many outstanding lawyers both in and out of the government and Judge Koh is among the very best. She will bring to the Ninth Circuit a strong background and expertise in technology, business litigation, and criminal law in addition to her more than a decade of experience on the state and federal trial court bench.

Judge Koh has been a trailblazer throughout her career. She was the first female Korean American Article III judge, the first Asian Pacific American Article III judge in the San Francisco Bay/Silicon Valley area and, if confirmed, will be the first female Korean American Circuit Court judge. Her awards and achievements both

as an attorney and a judge are far too numerous to mention. Perhaps most significant is the fact that she is among the district judges most cited by other federal judges, showing the high regard in which she is held by her fellow jurists.

Judge Koh has committed most of her professional life to public service. In addition to her work in the Justice Department and on the Bench, she has been active with numerous community and law-related organizations and held leadership positions in organizations such as the Association of Business Trial Lawyers, American Law Institute Data Privacy Project, Asian Pacific Bar Association of Silicon Valley, Korean American Bar Association of Northern California.

I hope the Judiciary Committee and Senate will move quickly to confirm this outstanding nominee. The country needs more judge like Judge Koh: brilliant, non-partisan and consummately professional. I can think of no one who would be more qualified by background, temperament, intellect and integrity for the position.

Respectfully,

Daniel Levin

SAINT DENIS & OUR LADY OF THE WAYSIDE CHURCHES
2250 Avy Avenue ✦ Menlo Park, CA 94025 ✦ 650.854-5976 ✦ fax 650.854.3754

September 30, 2021

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley,

As pastor of St. Denis Church in Menlo Park, California for the past six years, it is an honor to write this letter on behalf of Judge Lucy Koh. Lucy and her family are registered and active members of my parish. I have personally gotten to know Lucy's family. Both her son and daughter have gone through the parish's two year Confirmation Program and have received the Sacrament of Confirmation. St. Denis Church has an outreach ministry to Maple Street Shelter in Redwood City which houses and feeds the homeless. Many of my parishioners are active in providing and serving dinner to them. For the past five years, Lucy and her family have given their time and presence on a monthly basis ministering to the homeless by providing and serving dinner.

As a priest, it is wonderful to see that Lucy and her family practice and live their faith by attending mass every Sunday. It is obvious to me that Lucy takes her faith seriously. Lucy and her husband have been very supportive of me from the very beginning of my cancer diagnosis. They not only tell me that they are praying for me, but also provided meals for me. It is very comforting to know that I am cared and loved by them.

If there is anything else that I can provide, please do not hesitate to contact me at 415 686-9951 or wpodell@aol.com.

God bless,

Fr. Paul O'Dell

October 2, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: **Letter of Support for Lucy H. Koh for the United States Court of Appeals for the Ninth Circuit**

We, the undersigned groups, represent diverse legal, advocacy, and community-based organizations, who write in strong support for the nomination of the Honorable Lucy H. Koh to become a judge on the U.S. Court of Appeals for the Ninth Circuit.

Judge Koh's historic legal reputation is beyond reproach. In 2008, Judge Koh was appointed by Governor Arnold Schwarzenegger to the California Superior Court for the County of Santa Clara. In 2010, she was nominated to the U.S. District Court for the Northern District of California and was confirmed 90-0. Upon confirmation, she became the first female Korean American Article III judge and the first Asian American Article III judge in the Northern District of California. Throughout the federal nomination process Judge Koh received strong bipartisan support.

Judge Koh is a proven jurist with a strong command of technology, business litigation, and criminal law issues. She has been recognized for her adept handling of some of the nation's most technologically complicated, high profile federal disputes involving

intellectual property, privacy, antitrust, and other complex subjects. She has presided over blockbuster trials including four *Apple v. Samsung* intellectual property jury trials and litigation involving data breach, antitrust, and other matters with global technology giants such as Google, Amazon, Facebook, Yahoo, and Microsoft. *WIRED* Magazine and *Popular Mechanics* have recognized her as one of the most influential people in technology.

While Judge Koh's legal bona fides are unimpeachable, we wanted to take this opportunity to underscore her deep and abiding commitment to public service, to her community, and to spotlight her own extraordinary personal background.

Judge Koh is a child of immigrants. Her mother was a refugee who escaped from North Korea, and her father fought against the Communist North. She was the first in her family to be born in this country and has lived throughout this great nation, including in Lorman, Mississippi where her mother taught at Alcorn State University, the nation's first African American Land Grant college, and where her father ran a small business; and in the heartland of America, including in Norman, Oklahoma.

Prior to her position on the federal bench, Judge Koh spent extensive time in public service including serving as a fellow with the U.S. Senate Committee on the Judiciary and serving several tours of duty with the U.S. Department of Justice: first, in the Office of Legislative Affairs, and later, as an Assistant U.S. Attorney for the Central District of California where she prosecuted financial fraud, narcotics, bank robbery, immigration, public corruption, and violent crimes cases.

Throughout her exceptional career, Judge Koh has maintained a strong connection with her community, lifting up and aiding other people of color. For example, the National Asian Pacific American Bar Association (NAPABA) bestowed upon her its Women's Leadership Award, as well as its Daniel K. Inouye Trailblazer Award, the organization's highest citation for commitment and leadership by lawyers who have paved the way for the advancement of other Asian American and Pacific Islander attorneys. Judge Koh's achievements in law and community service have been honored by the Korean American Bar Associations of Orange County, Southern California, and San Diego as well as the Council of Korean Americans. Her public service and community contributions have also been honored by the Asian American Bar Association of the Greater Bay Area, Asian Law Alliance, Asian Pacific American Bar Association of Silicon Valley, and Bay Area Asian Pacific American Law Students Association.

Judge Koh has demonstrated a commitment to serve communities beyond that of her own personal background. The San Francisco La Raza Lawyers Association bestowed upon her their Judge of the Year Award. She has been a keynote speaker at the Hispanic National Bar Association's National Convention and a member of the La Raza Lawyers Association of Santa Clara County for many years.

This Committee already knows Judge Koh's resume extremely well, and we believe that recognizing her strong personal commitment to others and unique background only makes her even more well qualified to continue to serve the people as a judge on the Ninth Circuit Court of Appeals.

Thank you for this opportunity to discuss Judge Koh's extraordinary background commitment to community service. We urge the Senate's swift confirmation of Judge Koh.

Sincerely,

Asian American Bar Association of the Greater Bay Area

Asian Pacific American Bar Association of Los Angeles County

Asian/Pacific American Bar Association of Sacramento (ABAS)

California Asian Pacific Islander Legislative Caucus

Chinese American Lawyers of the Bay Area

Filipino American Lawyers of San Diego

Filipino Bar Association of Northern California

Korean Americans For Political Action

Korean American Bar Association for Washington DC

National Asian Pacific American Bar Association (NAPABA)

Orange County Asian American Bar Association

Orange County Korean American Bar Association

Pan Asian Lawyers of San Diego (PALSD)

Santa Clara County La Raza Lawyers Association

South Asian Bar Association of San Diego

South Asian Bar Association of Southern California

Southern California Chinese Lawyers Association

October 4, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Letter of Support for Lucy H. Koh for the United States Court of Appeals for the Ninth Circuit

Dear Chairman Durbin and Ranking Member Grassley:

As former law clerks to Judge Lucy H. Koh of the U.S. District Court for the Northern District of California, we write this letter to offer our unwavering and enthusiastic support for President Biden's nomination of Judge Koh to serve on the U.S. Court of Appeals for the Ninth Circuit. Our group includes a diverse array of government lawyers at the local, state, and federal levels, including prosecutors and criminal defense attorneys; attorneys in the private sector who represent plaintiffs, defendants, labor unions, and large corporations; in-house corporate counsel; public interest lawyers; and academics. Our politics are just as diverse as our legal careers—we are Republicans, Democrats, and Independents who are members of the Federalist Society for Law & Public Policy Studies and the American Constitution Society. Despite our ideological and professional diversity, we are united in our belief that Judge Koh is an exemplary jurist who is an excellent choice for the Ninth Circuit. Having also served as clerks to judges on several federal appellate courts, including multiple current Ninth Circuit judges, we can attest to Judge Koh's ability to superbly discharge the duties of an appellate judge.

Judge Koh's qualifications are indisputably stellar and wide-ranging. In her 11 years on the bench in the U.S. District Court for the Northern District of California, Judge Koh has distinguished herself as a top jurist with a sharp intellect, tireless work ethic, quick wit, and commitment to ensuring the speedy and fair administration of justice. As we have all seen first-hand, Judge Koh approaches each case with a demonstrated commitment to faithfully applying the relevant precedent to the facts at hand. After wrestling with the intricacies of each case, Judge Koh issues detailed, thorough, and well-reasoned decisions that lucidly explain the result and rationale to the parties and also contribute to the law's development. Her detailed opinions have been favorably analyzed by scholars and commentators and cited by trial and appellate courts across the country.

During her time on the federal bench, Judge Koh has confronted and resolved a seemingly never-ending series of novel and rapidly evolving legal questions, particularly in the crucial areas of technology, privacy, and consumer protection. Judge Koh's ability to grasp the cutting-edge legal issues that predominate in our increasingly technological world make her an invaluable asset to the federal judiciary. Her impact would be greater still in the more reflective environment of the court of appeals, where her unparalleled capacity to parse and cogently analyze complex issues would come to the fore.

As a jurist, Judge Koh exhibits unwavering integrity and a deep respect for all actors in the judicial system, including the courthouse staff, counsel, litigants, jurors, victims, and the public. Her respect for all involved in the judicial system is apparent in her meticulous preparation before she takes the bench. She is deeply enmeshed in every detail of case management and understands the nuances of the legal and factual issues in each case before she hears argument. Proceedings before Judge Koh are always efficiently managed, in large part due to her preparation and her commitment to resolving cases in a reasonable timeframe—even when that requires exceedingly long hours. Judge Koh is known to hold herself, her staff, and counsel to the highest standards during jury trials to ensure that jurors' time is put to good use. Judge Koh will undoubtedly bring this same efficiency, which is rooted in principles of fairness and respect, to the appellate court.

Judge Koh's broad array of prior work experiences will also be a valuable asset on the Court of Appeals. Before she was nominated and unanimously confirmed by the Senate as a federal judge, Judge Koh was appointed to the California state trial court by then-California Governor Arnold Schwarzenegger. She has represented the United States as a criminal prosecutor, practiced at the highest levels of civil and corporate law, and worked in all three branches of the federal government. Judge Koh's broad array of experiences will undoubtedly help the Court of Appeals provide clear guidance to lower courts and a diverse set of litigants.

Further, Judge Koh's engaging personality and commitment to service will contribute positively to the collegiality on the Ninth Circuit. Judge Koh consistently brought joy to the San Jose courthouse by organizing birthday celebrations, affectionately known in chambers as "cake parties," for judges, court staff, and clerks before the pandemic brought these in-person events to a halt. Despite the intensity of her caseload, among the busiest in the nation, Judge Koh constantly welcomed students of all ages—from elementary school to law school—to her courtroom and chambers. She is a regular participant in charitable and community events, particularly those relating to the intersection of technology and the law, and many of us have seen Judge Koh strive for the same high standards of excellence when serving food and cleaning up at a local soup kitchen as she does in her courtroom.

In good times and bad, Judge Koh has provided significant support and mentorship to each of us, including well after the end of our terms as law clerks. She has celebrated the births of our children, mourned the losses of our family members, officiated our weddings, and supported our personal and professional successes. Because of her, we all consider ourselves to be part of a larger chambers family.

In short, Judge Koh is a stellar judge and an extraordinary person. The qualities that we witnessed in chambers on a daily basis during our clerkships will make her an outstanding appellate judge. She combines a deep respect for the traditions of our legal system with the technical expertise needed to interpret law in an ever-shifting environment. We support Judge Koh's nomination without hesitation and respectfully recommend that you confirm her to the U.S. Court of Appeals for the Ninth Circuit.

Sincerely,

Christine Allen, 2010-2019
Eric Monek Anderson, 2018-2019
Joseph Audal, 2013-2014
Connie K. Chan, 2011-2012
Daniel L. Chen, 2019-2020
Jeffrey W. Chen, 2017-2018
Matthew Chou, 2020-2021
Emily Curran-Huberty, 2013-2014
Laurie Dean, 2011-2012
Elena M. DiMuzio, 2010-2011
Courtney Dixon, 2016-2017
Jason George, 2016-2017
Rachel Hampton, 2018-2019
Benjamin Hand, 2020-2021
Amy Heath, 2017-2018
Asher Hodes, 2012-2013
Henry Huang, 2014
Cameron Johnson, 2012-2013
Liz Kim, 2014-2015
Amy Knight, 2012-2013
Jeffrey Kosbie, 2018-2019
Frances Kreimer, 2013
Kiet T. Lam, 2019-2020
Alexandra Leeper, 2015-2016
Kristen Lovin, 2016-2017
Jessica Lutkenhaus, 2015-2016
John D. Maher, 2017-2018
Nico Martinez, 2014-2015
Christopher Milione, 2019-2020
Eli Miller, 2011-2012
Elizabeth Moulton, 2014-2015
Joss Nichols, 2013-2014
Ajeet Pai, 2015-2016
Lara Palanjian, 2013-2014
Charles Proctor, 2014-2015
Adam Richards, 2010-2011
Hannah Schoen, 2020-2021
Jacob Schroeder, 2015
Javier Serrano, 2010-2011
Jennifer Stark, 2012-2013
Brandon V. Stracener, 2016
Robert Swanson, 2013-2014
Vikram Swaruup, 2013-2014
Steve Tensmeyer 2016-2017
Laura Trice, 2010-2011
Juan P. Valdivieso, 2011-2012

Xiao Wang, 2015-2016
Kaiyi Xie, 2018-2019

October 4, 2021

The Honorable Dick Durbin
Chairman, Judiciary Committee
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member, Judiciary Committee
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Lucy Koh to the Ninth Circuit Court of Appeals

Dear Chairman Durbin and Ranking Member Grassley:

The National Asian Pacific American Women's Forum (NAPAWF) strongly urges you to confirm Judge Lucy Koh as a judge on the Ninth Circuit Court of Appeals. We are excited by Judge Koh's historic nomination to the Circuit Court.

As the only national organization dedicated to building power with American and Pacific Islander (AAPI) women and girls, NAPAWF gives voice to issues central to AAPI women and girls and is actively engaged in all matters of the federal courts by leading advocacy efforts among reproductive justice organization through an intersectional gender and race angle. We are thrilled that if confirmed, Judge Koh will bring her exceptional experience and much-needed diversity to the federal circuit court.

The Ninth Circuit is comprised of states like Oregon, Guam, Hawaii, Washington, and California, home to millions of AAPIs. Currently, there are only 10 Asian American judges at the Circuit level and 29 at the district court level. If confirmed, she'd be the first Korean American woman judge at the appellate level, the second Asian American woman to serve on the Ninth Circuit from California, and one of a handful of Asian American women judges on the federal bench.

Deep Civil and Criminal Legal Experience
Judge Koh is immensely qualified for the Ninth Circuit, having practiced at various levels and in both public and private sectors.

After graduating from Harvard Law School, she first served in the Senate Judiciary Committee as a Women's Law and Public Policy Fellow, then as an attorney with the United States Department of Justice, including as an Assistant United States Attorney in the Office of the Attorney for the Central District of California. After her time in public service, she joined the private sector where she litigated business and intellectual property issues.

Exemplary Judicial Record
Judge Koh was first appointed to Santa Clara County Superior Court by Governor Arnold Schwarzenegger of California. In 2010, her nomination to the Northern District of California was confirmed with the overwhelming support of 90-0.[1] Judge Koh's wide-ranging experience in criminal and civil litigation gives her substantive expertise and skills that will lend to her judicial decision-making.

Judge Koh's ability to wade into new legal matters and handle the breadth of issues that will appear before her is demonstrated through her judicial record that spans more than a decade. As state and federal judge, she ruled in both criminal and civil law matters, including cutting-edge technology law, employment, and contemporary constitutional matters. Given her exemplary career and record, we are confident Judge Koh will continue to skillfully grapple with groundbreaking and crucial issues of our time.

Ninth Circuit Will be Enriched by Judge Koh on the Bench
Judge Koh's invaluable experience and identity as an Asian American woman adds much needed diversity to the Ninth Circuit Court of Appeals. NAPAWF offers its support and respectfully asks the Senate to swiftly confirm Lucy KohIf you have any questions or would like to speak further with us, please contact Da Hae Kim, Legal Advocacy and Judicial Strategy Manager at dkim@napawf.org. Thank you for your consideration.

Sincerely,

Sung Yeon Choimorrow
Executive Director
National Asian Pacific American Women's Forum (NAPAWF)

[1]https://www.congress.gov/nomination/111th-congress/1363

October 4, 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 Lucy Koh to the Ninth Circuit Court of Appeals. She is a highly respected and principled federal district judge with an extremely diverse range of professional experiences. Her confirmation will benefit the entire Ninth circuit.

Judge Koh earned both her undergraduate and her law degrees from Harvard. She moved to Washington, DC in 1993 for an internship with the Senate Judiciary Committee and then a position at the Justice Department, where she worked on federal legislation and the implementation and enforcement of various federal laws. In 1997, she moved to Los Angeles to become an assistant U.S. Attorney, gaining experience as a federal criminal prosecutor. In 2000, Koh transitioned to private practice, gaining expertise in intellectual property and business litigation while at law firms in Palo Alto and Menlo Park. She represented individuals, technology companies, and biotech companies, both as plaintiffs and as defendants.

She shifted from advocacy to the bench in 2008, when Gov. Arnold Schwarzenegger appointed her to the Superior Court of California. With a docket that included criminal, civil, juvenile delinquency, juvenile dependency, and family law matters, Judge Koh presided over more than 200 trials that went to verdict or judgment.

Since 2010, she has been a federal judge in the Northern District of California, a position she was confirmed to unanimously by the U.S. Senate. Since then, she has issued more than 3,000 written opinions. Among her high-profile cases, she presided over Apple's lawsuit against Samsung for allegedly violating the former's smart phone patent, a case that allowed her to use and expand her expertise in the increasingly important and complex nexus of intellectual property and technology.[i] In another important case, Judge Koh ruled in 2015 that the Fourth Amendment applies to location data often automatically generated by a person's cell phone, so that law enforcement agencies need a warrant in order to search the data.[ii] This issue was new to the judiciary, and two years later the Supreme Court adopted the same position in an unrelated case.[iii]

Judge Koh recognizes the importance of the federal judiciary in protecting the rule of law and our nation's democracy. She was also part of a unanimous three-judge panel ruling that the Trump administration's plan to exclude non-citizens from apportionment data after the 2020 U.S.

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

Census violated the Constitution and federal statutes.[iv] She also issued an injunction against the Trump administration's plans to unlawfully end counting for the 2020 Census prematurely.[v]

When confirmed, Judge Koh will become the first Korean-American woman to serve as a federal appellate judge. Breaking barriers is nothing new to her: When she became a federal district judge in 2010, she was the Bay Area's first Asian-American judge and first Korean-American woman in the nation to be a federal judge.

As a Harvard Law student, Koh wrote about how her life experience has shaped her understanding of racial inequality:

> Having grown up as the only Asian-American in all-African-American communities, all-White communities, and integrated African-American-White communities in Mississippi and Oklahoma, I have always been intensely conscious of race and racial inequality. My international experience has heightened my understanding of cultural, religious, racial and socioeconomic barriers to equality.[vi]

Judge Koh would bring the benefits of her personal experience to the Ninth Circuit, along with years of legal expertise gained during her career at the Justice Department, private practice, and on the California and federal judiciary. When she was first nominated to the Ninth Circuit by President Obama in 2016, she won bipartisan approval from the Judiciary Committee, but the full Senate did not have an opportunity to vote on her confirmation.

Five years later, the Senate is fortunate to have a second opportunity to confirm this unquestionably qualified nominee to the appellate bench. We urge her prompt confirmation.

Sincerely,

Marge Baker
Executive Vice President

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[i] *Apple, Inc. v. Samsung Electronics Co. Ltd.*, described in Lucy Koh's Response to Senate Judiciary Committee Questionnaire for Judicial Nominees, Question 13c, pp. 45-46.
[ii] *In re Telephone Information Needed for a Criminal Investigation*, 119 F. Supp. 3d 1011 (N.D. Cal. 2015).
[iii] *Carpenter v. United States*, 138 S. Ct. 2206 (2018).
[iv] *City of San Jose v. Trump*, 497 F. Supp. 3d 680 (N.D. Cal. 2020). The Supreme Court subsequently ordered the decision vacated for lack of jurisdiction but did not express a view on the merits, with Justices Breyer, Sotomayor, and Kagan dissenting. 141 S. Ct. 1231 (2020).
[v] *National Urban League v. Ross*, 489 F. Supp. 3d 939 (N.D. Cal. 2020). The injunction was subsequently stayed by the Supreme Court without explanation over Justice Sotomayor's dissent. 141 S. Ct. 18 (2020).
[vi] Harvard Law School's 1995-1996 Public Interest Job Search Guide, p. 27.

October 5, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing more than 130 public interest and civil rights organizations, I write to strongly support the confirmation of Judge Lucy H. Koh to the United States Court of Appeals for the Ninth Circuit.

Judge Koh's exemplary legal career and decade as a Judge on the U.S. District Court for the Northern District of California make her an exceptional candidate to serve on the Ninth Circuit. The U.S. Senate unanimously confirmed Judge Koh to serve on the U.S. District Court in 2010. Since her confirmation, Judge Koh has issued approximately 3,250 opinions with a reversal rate of just 1.3%. She has ruled on a wide range of civil and criminal matters including notable decisions in the area of privacy and technology law. In 2016, Judge Koh was nominated to the Ninth Circuit Court of Appeals. Her nomination was reported to the full Senate by a bipartisan vote of 13-7 (with the support of four Republican senators on Committee) but unfortunately was never considered by the full Senate. Prior to her federal judicial service, Judge Koh was appointed to the California Superior Court by former Governor Arnold Schwarzenegger and served there for two years.

Judge Koh's rulings on these courts reflect a fair and impartial jurist with a clear commitment to equal justice. She made key decisions that ensured a fair and accurate census. In *National Urban League v. Ross*, the Trump administration reversed course on an extended census timeline developed in response to the COVID-19 pandemic. Judge Koh issued a preliminary injunction requiring that the federal government stick with this COVID-19 responsive timeline and continue the count until the end of October. Sitting by designation on a Ninth Circuit panel one month later, she held that the government's plan to exclude non-citizens from the census violated the U.S. Constitution. Also illustrative of her commitment to equal justice, Judge Koh presided over *In re High-Tech Employee Antitrust Litigation*, where tech workers sued Apple, Google, and others for conspiring to keep their salaries low and depressing their pay by 10% to 15%. Judge Koh denied the companies' motion to dismiss, rejected an initial settlement offer as too low, and ultimately approved a $415 million dollar settlement deemed fair to workers.

Prior to joining the bench, Judge Koh had a distinguished career in public service and private practice, and has an extensive background in both criminal and civil law. After graduating from Harvard Law School, Judge

Koh served as a Women's Law and Public Policy Fellow for the U.S. Senate Judiciary Committee. After the fellowship, she worked at the U.S. Department of Justice, first as Special Counsel for Legislative Affairs, next as a Special Assistant to the Deputy Attorney General, and finally as an Assistant U.S. Attorney in the Criminal Division of the Central District of California. In the U.S. Attorney's Office, Judge Koh earned the FBI Director Louis J. Freeh Award for her successful prosecution of a $54 million securities fraud case. After first working on intellectual property crimes in the U.S. Attorney's Office, Judge Koh developed this expertise in private practice at the Northern California law firms Wilson Sonsini Goodrich & Rosati and McDermott Will & Emery. Judge Koh's wide range of both criminal and civil experience prepared her for exemplary service on the Northern District of California and will continue to serve her as an appellate judge.

Finally, if confirmed, Judge Koh, who is the child of immigrants, would be the third AAPI woman to ever sit on a U.S. Circuit Court of Appeals and the first Korean-American woman to serve as a federal appellate judge. The confirmation of Judge Koh, who is nominated to the Circuit Court with the largest AAPI population, will mean that the Circuit better reflects the communities it serves.

Judge Koh's legal career reflects a deep commitment to the rule of law and the safeguarding of our constitutional rights. Given her exemplary qualifications, the Senate should swiftly confirm Lucy H. Koh to the United States Court of Appeals for the Ninth Circuit

Sincerely,

Rakim Brooks
President, Alliance for Justice

National Council of Jewish Women
2055 L St NW Suite 650
Washington, DC 20036

T: 202. 296. 2588

NCJW
National Council of Jewish Women

October 5, 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 200,000 advocates of National Council of Jewish Women (NCJW), I write to express our support for the nomination of Judge Lucy H. Koh to the United States Court of Appeals for the Ninth Circuit.

Judge Lucy H. Koh has been serving as a US District Judge of the US District Court for the Northern District of California since 2010, confirmed 90-0 with bipartisan support. She has a long career in public service, serving on the Superior Court of California for Santa Clara County, and prior to that in various positions at the US Department of Justice as a special assistant to the US Deputy Attorney General, Special Counsel in the Office of Legislative Affairs, and an Assistant US Attorney in the US Attorney's Office for the Central District of California. Judge Koh began her legal career as a Women's Law and Public Policy Fellow for the US Senate Judiciary Committee.

Additionally, Judge Koh was a partner at the law firm of McDermott Will & Emery LLP and worked as a senior associate in the Palo Alto office of Wilson Sonsini Goodrich & Rosati. Throughout her career, Judge Koh has defended people's rights and upheld the Constitution, listened and advocated, and worked on federal legislation and enforced laws as her role required. Her range of experience in both government and in private practice — and expertise across issue areas — will benefit the Ninth Circuit, the nation's largest appellate court.

If confirmed, Judge Koh would be the first Korean-American woman to serve as a federal appellate judge, bringing a valuable lens to our courts. Her perspective is incredibly necessary at a time when Asian American and Pacific Islander federal judges are underrepresented on our courts, yet comprise about 24 million people across the country — as this population continues to grow. It is critical the federal courts represent the communities it serves in order for the public to trust that the institution and its decisions are legitimate.

NCJW has long worked with senators and administrations to ensure a pipeline of judges who are fair, qualified, and independent and represent a diversity of backgrounds and experiences. Judge Lucy H. Koh more than meets our criteria — a respected and exceptional nominee who would bring her valuable knowledge, insights, and perspective to the appellate court. **NCJW urges you to support the nomination of Judge Lucy H. Koh to the United States Court of Appeals for the Ninth Circuit.**

Sincerely,

Jody Rabhan
Chief Policy Officer
National Council of Jewish Women

ST. THOMAS MORE SOCIETY OF SANTA CLARA COUNTY

September 30, 2021

The Honorable Richard Durbin, Chairman
Committee on the Judiciary, U.S. Senate
Washington, D.C. 20510

The Honorable Charles Grassley, Ranking Member
Committee on the Judiciary, U.S. Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley,

It has come to my attention that one of our members, the Honorable Lucy Koh, has been nominated by President Biden to serve as a judge on the United States Court of Appeals for the 9th Circuit. Such an honor has never been bestowed upon a member of the St. Thomas More Society of Santa Clara County ("the Society"). We are delighted to learn this good news.

The Society is a local nonprofit Catholic organization dedicated to enhancing the spiritual lives of our members and to promoting the principles and ideals of St. Thomas More, the patron saint of lawyers and politicians. The Society is comprised of judges, lawyers, law professors, and law students in Santa Clara County. We sponsor monthly Masses and the annual Red Mass. At the Red Mass we confer the St. Thomas More Award upon a judge or lawyer who promotes the ideals of service and sacrifice which are reflected so conspicuously in the life and death of St. Thomas More. We also sponsor an annual silent retreat for members of the legal profession.

Judge Koh has served in many capacities for our Society. As recently as 2013 she was a member of our Board of Directors and served as a retreat captain. Since concluding her service she has been a participating member of our Society, including as a featured speaker at our recent Red Mass reception.

We know Judge Koh to be a person of deep-seated faith. We believe her faith will serve her well as an impartial appellate judge. We ask God's blessings on you as you consider her nomination.

Very truly yours,

Chris Boscia
President
St. Thomas More Society of Santa Clara County

SIERRA CLUB

EXPLORE, ENJOY, AND PROTECT THE PLANET.

October 6th, 2021

The Honorable Richard J. Durbin
Hart Senate Office Building, Office 711,
Washington, DC 20510

Honorable Chuck Grassley, Ranking Member
Hart Senate Office Building, Office 135,
Washington, D.C. 20510

RE: Nomination of Judge Lucy H. Koh for the United States Court of Appeals for the Ninth Circuit

Dear Chairman Durbin, Ranking Member Grassley and Members of the Judiciary Committee,

On behalf of our over 3.8 million members and supporters, **I write to express our strong support for the confirmation of Judge Lucy H. Koh to the United States Court of Appeals for the Ninth Circuit.**

Judge Koh has, throughout her career, exemplified what it means to pursue equal justice under the law. Since being unanimously confirmed in 2010 as a federal judge to the Northern District of California, she has delivered thoughtful and well-grounded decisions regarding the environment, democracy and civil rights. The thoroughness, clarity and reasoning of her decisions demonstrates that she is a fair and conscientious jurist who recognizes the government's obligation to protect public health and the environment, can distinguish science from politics, and understands that the public needs access to the courts to hold government and industry accountable.

Additionally, if confirmed, Judge Koh would serve as the first Korean-American appointed to any federal appellate court, which will help reflect the diversity of the nation, expand the range of perspectives on the federal bench, and help foster trust from the community in our judicial system.

For these reasons and more, **we strongly encourage the Senate to confirm Judge Lucy H. Koh for the United States Court of Appeals for the Ninth Circuit.** If you have any questions or would like to discuss the matter further, please do not hesitate to contact me.

50 F Street, NW, Eighth Floor Washington, DC 20001 • (202) 547-1141

SIERRA CLUB

EXPLORE, ENJOY, AND PROTECT THE PLANET.

Sincerely,

Michael Brune
Executive Director
Sierra Club

50 F Street, NW, Eighth Floor Washington, DC 20001 • (202) 547-1141

AFL-CIO

LEGISLATIVE ALERT

August 9, 2021

Chairman Richard Durbin
Ranking Member Charles Grassley
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050

Dear Chairman Durbin and Ranking Member Grassley:

We write on behalf of the AFL-CIO to strongly urge a yes vote on the confirmation of Carolyn Lerner to serve on the U.S. Court of Claims.

Ms. Lerner is the former Senate-confirmed head of the U.S. Office of Special Counsel (OSC). At OSC, she worked tirelessly to defend the rights of whistleblowers in the federal government. She successfully worked with Congress to pass important reform legislation, including the Whistleblower Protection Enhancement Act and the Hatch Act Modernization Act. While at OSC, Ms. Lerner was widely-respected across the partisan divide, winning praise from federal employee unions and Senator Charles Grassley alike.

Since leaving OSC, Lerner has worked in the federal judicial system as the head of the Mediation Program for the federal courts in the D.C. Circuit and serves as the Court's Workplace Relations Coordinator. Prior to her government service, Lerner was a founding partner of a civil rights and employment law firm, Heller, Huron, Chertkof, Lerner, Simon & Salzman. At the firm, she did exemplary work defending the rights of federal employees and also served as the federal court-appointed Special Master in a sexual harassment and retaliation class action.

Finally, Lerner has distinguished academic credentials having been an adjunct professor at Georgetown University Law Center and George Washington University Law School and received her J.D. from NYU School of Law, where she was a Root-Tilden public interest scholar.

Ms. Lerner's extraordinary experience makes her uniquely qualified to hear claims against the United States and fairly and wisely weigh the arguments of the government and the claimants. In addition, having represented individual working people, she would bring an important form of diversity to the bench – diversity of experience.

We urge a yes vote on Ms. Lerner.

Sincerely,

William Samuel
Director, Government Affairs

INTRODUCTION OF CAROLYN LERNER

NOMINEE - JUDGE, U.S. COURT OF FEDERAL CLAIMS

SENATE JUDICIARY COMMITTEE

SENATOR BENJAMIN L. CARDIN

OCTOBER 6, 2021

Chairman Durbin, Ranking Member Grassley, thank you for the opportunity to submit a statement in writing for the record today, in support of the nomination of Carolyn Lerner to be a Judge of the U.S. Court of Federal Claims. I was pleased to recommend Carolyn, a fellow Marylander, to the White House for consideration for this position.

Carolyn previously served as the head of the U.S. Office of Special Counsel (OSC). OSC is an independent federal investigative and prosecutorial agency tasked with safeguarding the merit system by protecting federal employees and applicants from prohibited personnel practices, with a special emphasis on protecting employees against reprisals for whistleblowing. Their basic authorities come from four important federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA).

The Senate confirmed Carolyn by voice vote in 2011 for this position, and I was pleased to support her reappointment to this position in 2016, although the Senate did not take action on her re-nomination before the 2016 presidential election.

In particular, at OSC Carolyn worked on a bipartisan basis in Congress to help enact legislation to enhance protection for whistleblowers, such as the Whistleblower Protection Enhancement Act. Carolyn then went on to work in the federal judicial system as the head of the Mediation Program for the federal courts in the D.C. Circuit, and serves as the Court's Workplace Relations Coordinator. She is also currently an adjunct law professor at the Georgetown University Law Center.

The U.S. Court of Federal Claims is unique in that it hears monetary claims against the U.S. Government, and has nationwide jurisdiction to hear these types of claims.

Carolyn is exceptionally qualified to hear claims against the United States, given her previous service at OSC and her career in protecting whistleblowers who report waste, fraud, and abuse in the government. At OSC, Carolyn regularly weighed the facts, evidence, and the law as she managed various sensitive and complicated cases involving misconduct by government agencies, managers, and employees. I am confident she would excel as a judge in a court that holds bench trials and does not employ juries, and hears complicated cases that can involve substantial sums of money as well as lengthy and technical litigation.

I therefore urge the committee to favorably report her nomination to the full Senate.

August 9, 2021

The Honorable Richard J. Durbin, Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Building
Washington, D.C. 20510

The Honorable Charles E. 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 Armando Bonilla to the United States Court of Federal Claims. We are all current or former Department of Justice (DOJ) attorneys who had the opportunity to work with Armando during his tenure at DOJ. We recognize the importance of all jurists to demonstrate a commitment to fidelity to the rule of law, independence, and fairness to all litigants. We each believe that Armando exemplifies each of these characteristics, and we uniformly agree that he is exceptionally qualified to serve on the Court of Federal Claims.

All of us have interacted with Armando and have witnessed first-hand his exceptional intellect, extraordinary work ethic, and commitment to the highest ethical and professional standards. Armando has dedicated the majority of his legal career to public service, having served a number of functions with the DOJ. During his 16 years as a Trial Attorney with the Department's Civil Division and then later with the Criminal Division's Public Integrity Section and Asset Forfeiture and Money Laundering Section, Armando litigated and directed over 150 cases on behalf of the DOJ. Many of these were significant matters involving corruption by public officials, tax evasion, and money laundering. Armando approached each of these cases with an unwavering commitment to justice and the administration of the rule of law.

Armando later served in leadership roles at the Department, first as an Associate Deputy Attorney General and then as an Associate General Counsel with the U.S. Marshal's Service. In those roles, Armando ensured that the DOJ's policies and priorities were applied in a fair and even-handed manner to all individuals. Throughout Armando's 24-year tenure with the DOJ, he consistently demonstrated impeccable judgment and integrity, and earned the trust and respect of colleagues, opposing counsel, and all judges before whom he appeared.

Beyond his many accomplishments and legacy with the DOJ, Armando was a terrific colleague and devoted friend. His humor, generosity, and willingness to help a colleague in need stand out as his greatest attributes. Those of us who were fortunate to have worked with Armando during his time at the Department have no doubt that he possesses the qualifications, ability, and temperament to serve honorably and with distinction as a federal judge. We enthusiastically

support his nomination and urge that the Senate confirm him to the U.S. Court of Federal Claims without delay.

Respectfully submitted,

Monique Abrishami
Joshua Berman
Steve Bunnell
Ann Brickley
Geoffrey Brown
Mary Patrice Brown
Mary Butler
Rodger Citron
Barak Cohen
Colleen Conry
Jeanne Davidson
Kendall Day
Maureen Delaney
Kevin Driscoll
Miles Ehrlich
Richard Evans
Scott Ferber
Michael Ferrara
Paul Fishman
Eric Gibson
Eileen Gleason
Stuart Goldberg
David Harbach
John Hoffman
Raymond Hulser
Edward Kang
Brian Kidd
Peter Koski
Andrew Levchuk
Marc Levin
Ethan Levisohn
Brian Lichter
Andrew Lourie
Edward Loya Jr.
Patrick Martin
Dan McClain
Marquest Meeks
Eric Olshan
Brian Owsley
Shaun Palmer

Susan Park
John Pearson
Paul Pelletier
Daniel Petalas
Tracee Plowell
Raphael Prober
Alan Lo Re
Alex Rene
Laurel Rimon
John Roth
Monique Roth
Bill Ryan
Rhonda Schmidtlein
John Scott
Justin Shur
Howard Sklamberg
Jack Smith
Matthew Solomon
Matthew Stennes
Natashia Tidwell
Jeffrey Tsai
Rae Woods
Peter Zeidenberg

The Honorable Chuck Schumer
Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Dick Durbin
Chair
Senate Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
Senate Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Leader Schumer, Leader McConnell, Chair Durbin and Ranking Member Grassley:

I write to urge you to swiftly confirm Jonathan Kanter as Assistant Attorney General for Antitrust (AAG) at the U.S. Department of Justice (DOJ). The alarming rise in consolidation across digital marketplaces and unlimited power of Big Tech platforms requires immediate attention, and Jonathan Kanter is well-qualified to lead the Antitrust Division at this important time.

High barriers to entry due to rampant data collection and network effects, along with hundreds of uncontested mergers and acquisitions over the past two decades, have given Big Tech control over what businesses win and lose and what voices are seen and heard. It is high time this country's antitrust enforcement agencies rein in this unchecked economic and political power.

Throughout his over 20-year career, Kanter has distinguished himself as a strong advocate for meaningful antitrust enforcement and robust competition, both in private practice and as a government attorney. Currently the founder and partner at his own boutique, antitrust-focused law firm, The Kanter Group LLC, Kanter previously served as co-chair of the antitrust practice at Paul, Weiss, Rifkind, Wharton, and Garrison LLC, where he worked to hold Big Tech accountable for their anticompetitive conduct, and as an attorney for the U.S. Federal Trade Commission's Bureau of Competition. His experience and expertise make him well-prepared to take on the important fights currently before the Antitrust Division, as well as those that are likely to arise during his tenure.

Importantly, there is strong Republican support for addressing the anticompetitive conduct of the dominant digital platforms. Kanter's nomination has already received the praise from the top Republican on the Senate Judiciary's Subcommittee on Competition Policy, Antitrust, and Consumer Rights, Senator Mike Lee, who said that he was "encouraged" by Kanter's track record.

Kanter is deeply knowledgeable of the law and economics of antitrust as well as the costs associated with underenforcement. Not adequately enforcing our antitrust laws makes it harder for businesses that play by the rules to thrive and create jobs, while limited competition leads to higher prices and suppressed innovation that hurts consumers. The lack of competition between

digital platforms in particular has resulted in the dangerous suppression of conservative voices and viewpoints. Considering these costs, it is imperative that the Senate confirm Jonathan Kanter in a timely fashion.

There are also a number of important antitrust initiatives and reviews already under way at DOJ – including an ongoing antitrust lawsuit against Google and a joint review of merger guidelines with the FTC – that deserve the focus and leadership of an appointed and confirmed nominee.

The costs of delaying the confirmation of an AAG for Antitrust are high for both businesses seeking to compete fairly and consumers who deserve fairness in the marketplace. And Jonathan Kanter has proven throughout his career that he has both the knowledge and the will to be a strong protector of competition. That is why I urge you to move swiftly to confirm him to be Assistant Attorney General for Antitrust.

Sincerely,

Mike Davis
Founder and President
Internet Accountability Project

cc:

The Honorable Amy Klobuchar
Chair
Senate Committee on the Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights
U.S. Senate
Washington, DC 20510

The Honorable Michael S. Lee
Ranking Member
Senate Committee on the Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights
U.S. Senate
Washington, DC 20510

STRATEGIC ORGANIZING CENTER

August 17, 2021

Senator Richard Durbin
Chairman, US Senate Committee on the Judiciary
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Durbin,

The Strategic Organizing Center (SOC) writes to express our strong support for the nomination of veteran antitrust practitioner Jonathan Kanter to serve as the Assistant Attorney General for the Antitrust Division of the Department of Justice. The SOC is a coalition of four affiliated labor unions: the Service Employees International Union, the International Brotherhood of Teamsters, the Communications Workers of America and the United Farmworkers, who together represent 4 million people working in transportation, government, healthcare, agriculture and a number of other industries and economic sectors. All of these unions strive to ensure that every worker has a living wage, safe and secure workplaces, benefits to support their family, and dignity in retirement.

We believe that robust antitrust enforcement and regulation is needed to bring about a more equitable balance of power between working people and those who profit from their labor. For the past several decades, courts have taken an overly rigid and narrow view of antitrust law, disregarding the political and economic realities the law was meant to regulate. The law has also failed to evolve to reflect changes in markets, business practices, and consumers' and workers' conditions, especially the dangers presented by the largest digital platform companies.

Mr. Kanter is an excellent candidate to take on these challenges as the country's chief antitrust enforcement officer. He brings more than two decades of experience as an antitrust litigator at the top of his field. He has been at the forefront of confronting the rise of large digital platform companies and the new competitive threats these companies pose. And he recognizes the dangers of overly concentrated corporate power to democracy and is cognizant of the need to update antitrust laws that fail to reflect current market realities and societal conditions.

There is no question that Mr. Kanter has the antitrust litigation experience and leadership qualifications to lead the Department of Justice's Antitrust Division. He has been an antitrust litigator for more than twenty years, including for several years as the chair of the Antitrust Practice Group at one of the nation's most prominent law firms, and most recently as the principal at his own antitrust firm. He is also a veteran of the Bureau of Competition at the Federal Trade Commission, where he investigated major transactions concerning a range of industries including internet providers, online services, supermarkets, and energy companies.

Mr. Kanter has also spent the last several years working at the forefront of the most important antitrust issues of our time: the rise of digital platform companies and understanding and addressing the ways in which these companies utilize their power. He is an expert on online advertising technology, which drives key aspects of dominance by Big Tech companies such as Google, Facebook and Amazon. In a *New York Times* op-ed, he warned against a Federal Communications Commission proposal that would have given Google open access to consumer data from television broadcasting because it could allow Google to use this power to exclude competitors and restrict or manipulate consumer data in self-serving ways.

Indeed, Mr. Kanter has not only successfully drawn attention to the risks of Big Tech, but has taken on the new corporate giants themselves. He began confronting companies such as Google and Apple while at Paul Weiss, and eventually left that firm and his position as antitrust practice chair to ensure he could continue to represent clients adverse to the largest tech companies. As the *New York Times* put it, he has "built a practice out of criticizing the Big Tech giants." Mr. Kanter's readiness to confront the biggest and most dominant players in key sectors of our increasingly concentrated economy shows he has the will our country vitally needs.

Mr. Kanter also shows a deep appreciation of the principles and dynamics that have driven antitrust law historically, including its role in the distribution of economic and political power. He has indicated antitrust law should take a broad view of market realities rather than focusing myopically on narrow economic benefits to one group at the expense of others, and has signaling his willingness to scrutinize and revise antitrust law if it is not suited to current or developing market realities. His historical understanding, moreover, recognizes the important role antitrust law plays in preventing excessive concentration of economic power which may in turn "breed antidemocratic political pressures" and even in mitigating the rise of fascism.

A growing number of academics, legal practitioners, members of Congress, and President Biden grasp the reality that many in our country experience every day: that the increasing concentration of American economic power in the hands of a shrinking set of large corporations has significantly harmed economic well-being and opportunities for small businesses, consumers and workers and places our very democracy at risk. Mr. Kanter's experience as a top litigator in the field of antitrust, his expertise in the most important antitrust issues facing our country, and his leadership and courage in taking on powerful corporate interests make him an ideal choice to lead the fight to restore integrity, fairness and balance to our country's approach to antitrust policy and enforcement. For these reasons, we strongly support Jonathan Kanter's nomination for Assistant Attorney General for Antitrust at the Department of Justice.

Sincerely,

Michael Zucker
Executive Director- The SOC

1900 L St. NW,. Suite 900, Washington, DC 20036
202.721.0660 info@thesoc.org THESOC.ORG

STRATEGIC ORGANIZING CENTER
1900 L St. NW Suite 900
Washington DC 20036

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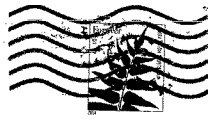


Senator Richard Durbin
Chairman, US Senate Committee on the Judiciary
711 Hart Senate Office Building
Washington, DC 20510

20510-

September 23, 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

The Honorable Amy Klobuchar
Chairwoman, Subcommittee on Competition Policy, Antitrust, and Consumer Rights
United States Senate
425 Dirksen Senate Building
Washington, DC 20510

The Honorable Michael S. Lee
Ranking Member, Subcommittee on Competition Policy, Antitrust, and Consumer Rights
361A Russell Senate Office Building
Washington, D.C. 20510

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, Ranking Member Grassley, Chairwoman Klobuchar and Ranking Member Lee:

We write as former Justice Department Assistant Attorneys General for Antitrust in support of the confirmation of Jonathan Kanter to head the Antitrust Division.

The undersigned served under different Administrations, Republican and Democratic. Although we may disagree on some antitrust issues, we share two important convictions. First, the Antitrust Division needs a leader who is smart and experienced, who appreciates the important role antitrust enforcement plays in our economy and who is capable of inspiring the talented men and women of the Division to continue their efforts to promote competition in all sectors of the economy. Second, we agree that Jonathan Kanter has the talent and the leadership skills to do the job well.

Many of us have seen Mr. Kanter in action over the last 20 plus years, from his days as a trial attorney at the Federal Trade Commission's Bureau of Competition and subsequently representing a wide variety of clients while in private practice. He knows the substance of antitrust. He appreciates its importance to the American consumer. He is a smart and articulate advocate. He respects his adversaries and inspires his colleagues and co-counsel. In short, we believe Mr. Kanter is right for this important position.

Some of us may not share the policy positions Mr. Kanter has taken in the past and some of us may disagree with decisions he will take if confirmed. But we share the view, based on seeing him in action for almost 25 years, that the nominee possesses the qualities that will make him an effective Assistant Attorney General. We urge the Senate to act favorably and as quickly as possible on the nomination of Jonathan Kanter.

Respectfully,

Donald I. Baker
Assistant Attorney General 1976 - 1977

Sanford Litvack
Assistant Attorney General 1980 - 1981

Charles F. Rule
Assistant Attorney General 1986 - 1989

James F. Rill
Assistant Attorney General 1989 - 1992

Joel I. Klein
Assistant Attorney General 1996 - 2000

Thomas O. Barnett
Assistant Attorney General 2006 - 2008

Christine A. Varney
Assistant Attorney General 2009 - 2011

William J. Baer
Assistant Attorney General 2013 - 2016

Makan Delrahim
Assistant Attorney General 2017 - 2021

September 15, 2021

Re: Timely Confirmation of Jonathan Kanter as AAG for Antitrust

Dear Leader Schumer and Senate Judiciary Chair Durbin,

On behalf of the undersigned organizations and the millions of Americans gravely concerned about the threat modern-day monopolies pose to our economy and our democracy, we urge you to advance the confirmation of Jonathan Kanter, President Biden's nominee to serve as Associate Attorney General (AAG) for antitrust matters, as swiftly as possible.

The AAG position oversees the Department of Justice's Antitrust Division, responsible for investigating antitrust cases, holding violators accountable, and promoting fair economic competition. The role is critical. Its ongoing vacancy -- already the longest in modern history -- is hobbling the government's enforcement efforts. A new sense of urgency from the Biden administration and Congress, in the form of new legislation and executive action, will have limited impact so long as we lack a strong antitrust AAG to lead the way.

This is an urgent economic crisis. Corporate consolidation, anticompetitive practices, and monopolistic trends continue to appear across American industries with alarming speed. There is no other industry where this is more true than tech, as Amazon, Apple, Facebook, and Google have amassed enormous market share, swallowed competitors, stifled innovation, jeopardized small businesses, and weakened democracy. These companies are marshalling lobbyists and a massive public relations effort to impede action in Congress and the executive branch and further entrench their stranglehold on the digital economy.

Mr. Kanter is a visionary antitrust leader who has seen these growing threats for what they are. His appointment marks the start of a new era for antitrust enforcement in the United States, but the window for reining in Big Tech's dominance may soon be closing. Whether the federal government will act expeditiously and forcefully enough to confront the challenge depends, in large part, on the Senate's swift confirmation of this nomination. We urge you to act.

Signed,

Accountable Tech
American Economic Liberties Project
Athena
Blue Future
Center for Digital Democracy
Center for Popular Democracy

Demand Progress
Fight for the Future
The Freedom BLOC
Friends of the Earth US
Institute for Local Self-Reliance
Jobs with Justice
Main Street Alliance
National Employment Law Project
The Other 98%
Our Revolution
People's Parity Project
Progress America
Project Blueprint
Public Citizen
Revolving Door Project
Social Security Works
Writers Guild of America West
X-Lab

1600 20th Street, NW • Washington, D.C. 20009 • 202/588-1000 • www.citizen.org

October 1, 2021

The Honorable Richard Durbin, Chair
The Honorable Charles Grassley, Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of Public Citizen's more than 500,000 members and supporters nationwide, we write in enthusiastic support of the nomination of Jonathan Kanter as Assistant Attorney General for Antitrust at the Department of Justice (DOJ). Mr. Kanter will bring decades of experience as a leading expert and successful antitrust practitioner to the Antitrust Division.

Public Citizen is a nonprofit advocacy organization focused on curbing corporate power and protecting democracy. We represent the public interest through legislative and administrative advocacy, litigation, research, and public education on a broad range of issues including protecting privacy, safeguarding consumers, and curbing corporate concentration's impact on our democracy.

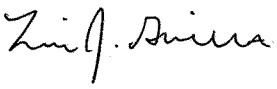
It is a critical time for antitrust enforcement and Mr. Kanter's substantial experience and leadership will make a powerful difference for America. We have seen chronic underenforcement from the U.S. antitrust agencies resulting from decades of anti-consumer caselaw, resistance to bringing cases, and a revolving door to industry that casts public doubt on the government's commitment to serious enforcement. As Big Tech companies have grown in power and influence, and other industries have experienced staggering consolidation, the DOJ has not done enough to rein in the power that comes from unchecked concentration.

Mr. Kanter's depth of experience and expertise in the field of antitrust law make him an ideal choice to lead the Antitrust Division at a critical moment for the antitrust enforcement. He previously served as an attorney in the Federal Trade Commission's Bureau of Competition where he investigated major matters involving internet providers, music publishers, online services, supermarkets and oil and gas companies, among others. In private practice he has a track record of leading large antitrust cases from beginning to end. He was featured in the 2019 edition of Variety's Legal Impact Report, which highlights the top attorneys in the entertainment business. In 2017, Global Competition Review and Who's Who Legal recognized him as one of the top competition lawyers under the age of 45. The Washingtonian and Super Lawyers list him as one of the "best lawyers" in Washington, D.C.

Moreover, Mr. Kanter has demonstrated a commitment to pursuing cases against Big Tech companies. Over the course of a career dedicated to antitrust enforcement, he developed and advocated for the successful antitrust theories underlying more than six major antitrust actions against Google in Europe and the United States, including record-breaking enforcement actions regarding unfair practices in the search and mobile phone markets.

Mr. Kanter's stellar career as an antitrust lawyer, his prior experience at the Federal Trade Commission, and his willingness to pursue cases against the biggest companies in the world make him the clear choice to serve as Assistant Attorney General for Antitrust at the DOJ. We urge you and the committee to support confirmation of his nomination.

Sincerely,



Lisa Gilbert
Executive Vice President
Public Citizen

Public Knowledge

October 6, 2021

Senator Richard Durbin
Chairman
Committee on the Judiciary
711 Hart Senate Office Bldg.
Washington, D.C., 20510

Senator Charles Grassley
Ranking Member
Committee on the Judiciary
135 Hart Senate Office Bldg.
Washington, D.C., 20510

Senator Amy Klobuchar
Chairwoman
Subcommittee on Competition Policy,
Antitrust, and Consumer Rights
425 Dirksen Senate Office Bldg.
Washington, D.C., 20510

Senator Michael Lee
Ranking Member
Subcommittee on Competition Policy,
Antitrust, and Consumer Rights
361A Russell Senate Office Bldg.
Washington, D.C., 20510

Chairman Durbin, Ranking Member Grassley, Chairwoman Klobuchar & Ranking Member Lee:

Public Knowledge writes in support of a quick confirmation for Jonathan Kanter as the Assistant Attorney General (AAG) for the Antitrust Division at the Department of Justice (DOJ). We believe that Mr. Kanter's significant litigation experience and commitment to strong antitrust enforcement make him the right enforcer for this critical juncture in competition and technology policy.

Jonathan Kanter has spent over 20 years being at the forefront of antitrust litigation. His groundbreaking work at the Kanter Law Group has been a pivotal component in the broader fight against dominant digital platforms. He's built a career looking out for smaller online businesses and consumers suffering under the power of digital gatekeepers. He's an innovative legal thinker and a consensus builder, qualities that should serve him well as he leads the Department of Justice's antitrust enforcement efforts. His arguments and writings helped us get to this important moment in Big Tech accountability. His advocacy, some before this very Committee, has showcased his deep knowledge of competition policy and the ways it can be reformed to better protect competition and consumers.

After years of underenforcement, agencies like the Federal Trade Commission (FTC) and Department of Justice are pushing harder than ever to address the dangers caused by the gatekeeper power of Big Tech. In particular, the DOJ case against Google has already been proceeding apace. A permanent head of the Antitrust Division like Kanter would strengthen that impressive work while pushing other ongoing investigations forward. The FTC, under Chairwoman Khan's leadership, is already streamlining procedures and reevaluating old ways of thinking to better fulfill its mission. It's essential that Mr. Kanter is swiftly confirmed so the DOJ can move forward with similarly important decisions about its work.

Public Knowledge

Getting bold leaders like Mr. Kanter in place is just one part of the antitrust puzzle. Strong enforcement is needed, but we also need to update our antitrust laws, significantly increase agency resources, and provide our enforcers with new legal tools to fully address competition concerns from dominant digital platforms. Together with the statutory tools Congress can provide, the Antitrust Division will be fully equipped to achieve their mission of promoting economic competition. In tandem, we urge the Judiciary Committee to take up bills like Senator Klobuchar's *Competition and Antitrust Law Enforcement Reform Act of 2021* and Senator Blumenthal's *Open App Markets Act*. The Committee has already done laudable work passing through the *Merger Filing Fee Modernization Act of 2021* to help solve the Antitrust Division's funding crisis.

The pro-enforcement agenda should apply across the economy, including work relating to intellectual property (IP) and to broadband. Intellectual property rights can be an important innovation incentive, but courts have long recognized that patents, copyright, and trademark can be abused to restrict competition, and that there is no IP exception to antitrust law. We hope a Kanter-led Antitrust Division will continue this longstanding practice. We must see an end to the ongoing consolidation of the mobile broadband market and a bold DOJ should work in concert with the Federal Communications Commission (FCC) to ensure that consumers have choices in both mobile and fixed broadband offerings. Robust policing of anticompetitive conduct from internet providers can ensure consumers have affordable, high-quality broadband options and that providers cannot leverage their control of a user's internet on-ramp to restrict competition.

The challenges facing antitrust enforcers are immense. If we want to revitalize competition across the entire economy, we need audacious leaders like Jonathan Kanter at the Antitrust Division leading the way.

Thank you for your continued leadership in this area,

/s/ Charlotte Slaiman
Charlotte Slaiman
Competition Policy Director
Public Knowledge

/s/ Alex Petros
Alex Petros
Policy Counsel
Public Knowledge

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001

KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

October 6, 2021

Via US Mail and Electronic Transmission

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator:

On behalf of the 1.4 million members of the International Brotherhood of Teamsters, I am pleased to support the nomination of Mr. Jonathan Kanter to serve as the next Assistant Attorney General for the Antitrust Division at the Department of Justice (DOJ). With more than two decades of experience in antitrust litigation, Mr. Kanter is uniquely qualified to take on the many challenges that persist in the pursuit of antitrust reform and regulation.

The Teamsters - along with our brothers and sisters in organized labor, consumer and worker advocates, and all those who strive to speak out for the public interest - believe that robust antitrust enforcement and regulatory reform is necessary to create a more equitable balance of power between working people and those who profit from their labor. For far too long, our nation's courts have utilized a narrow and rigid approach to antitrust law, an approach which has failed to adapt to the modern practices of the nation's largest corporations and has offered no path of recourse for our country's workers and consumers who are harmed by such corporate practices.

Mr. Kanter is ready and able to lead the Antitrust Division of the DOJ. As an antitrust litigator for more than twenty years, he has been widely recognized for his expertise in the complexities of antitrust law. Especially useful in the modern economy, Mr. Kanter has direct expertise in litigating mergers of tech companies and has worked to oppose mergers among tech giants that harm both consumers and workers. Mr. Kanter also has experience working within a federal enforcement agency, beginning his legal career as staff attorney for the Federal Trade Commission's Bureau of Competition.

Academics, politicians, and members of the general public are now realizing that the concentration of power among America's largest corporations creates real, tangible harms for consumers and workers alike. With Mr. Jonathan Kanter serving as the Assistant Attorney General for the Antitrust Division at the Department of Justice, we will be able to effectively bring much-needed change to antitrust enforcement in the United States. I urge the committee to favorably report upon his nomination respectfully urge the Senate to confirm Mr. Kanter without delay.

Sincerely,

James P. Hoffa
General President

JPH/td

Introductory Remarks for the Record for Jonathan Kanter,
Nominee Assistant Attorney General of the Antitrust Division of the Department of Justice
Senator Elizabeth Warren
Senate Judiciary Committee Nominations Hearing
October 6, 2021

Chair Durbin and Ranking Member Grassley, it is a privilege to introduce Jonathan Kanter, who has been nominated to serve as Assistant Attorney General of the Antitrust Division of the Department of Justice.

Throughout his 23-year legal career, Jonathan has dedicated his practice to shaping antitrust and competition law. Numerous organizations have recognized his innovation and sterling legal career over the years. It is no surprise that Jonathan has earned respect from lawyers and lawmakers on both sides of the aisle.

But what truly sets Jonathan apart is his committed work as an advocate, including his tenure as an attorney at the Federal Trade Commission's Bureau of Competition and culminating with the founding of his boutique antitrust firm – the Kanter Law Group. His work as an antitrust attorney has focused on advancing competition, always with a focus on helping people. So, for example, when Big Ag companies have abused their concentration and engaged in price fixing, he has highlighted the harm both to grocery shoppers and to our nation's farmers. And as Big Tech's monopolies continue to swell, he has highlighted the impact on innovation and choice, as well as the harm done to our privacy and the damage done to our children's self-esteem.

Jonathan's holistic vision for competition enforcement matches the original spirit of our antitrust laws: stopping mega corporations from decimating our local businesses and communities – and checking their threat to our political processes and democracy itself. He understands that our antitrust policy should be about protecting everyday people.

I believe in markets. But markets without rules are theft. As President Biden has noted, the failure to adequately enforce competition policy in this country has

resulted in unprecedented negative effects on workers, consumers, and innovation. Jonathan is the right person to lead the work that American families expect from their government: enforce the antitrust laws. I have no doubt that Jonathan is the right leader, and the right advocate, for this crucial moment in our history. I enthusiastically support his nomination.

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