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S. HRG. 117–971

CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

NOVEMBER 30, 2022

Serial No. J–117–8

Printed for the use of the Committee on the Judiciary

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CONTENTS

OPENING STATEMENTS

	Page
Durbin, Hon. Richard J.	1
Grassley, Hon. Charles E.	2
Feinstein, Hon. Dianne	8
Padilla, Hon. Alex	9

VISITING INTRODUCERS

Schumer, Hon. Charles E., U.S. Senator from New York	4
Stabenow, Hon. Debbie, U.S. Senator from Michigan	5
Warren, Hon. Elizabeth, U.S. Senator from Massachusett	3
Markey, Hon. Edward J., U.S. Senator from Massachusetts	6
Peters, Hon. Gary C., U.S. Senator from Michigan	7

NOMINEES

Grey, Jonathan James Canada	11
Questionnaire	31
Responses to written questions	294
Additional materials	580
Kobick, Julia E.	12
Questionnaire	89
Responses to written questions	345
Additional materials	591
Lin, Rita F.	13
Questionnaire	119
Responses to written questions	404
Additional materials	617
Reyes, Ramon Ernesto, Jr.	14
Questionnaire	168
Responses to written questions	459
Additional materials	629
Simmons, James Edward, Jr.	15
Questionnaire	234
Responses to written questions	517
Additional materials	635
Solomon, Amy Lefkowitz	16
Questionnaire	266
Responses to written questions	568
Additional materials	646

CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

WEDNESDAY, NOVEMBER 30, 2022

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

The Committee met, pursuant to notice, at 10:30 a.m., in Room 226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Feinstein, Hirono, Padilla, Grassley, Hawley, and Blackburn.

Also present: Senators Warren, Schumer, Stabenow, Markey, and Peters.

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

Chair DURBIN. This hearing of the Senate Judiciary Committee will come to order, and today we consider five judicial nominees and one Justice Department nominee. I'd like to say, in advance, we welcome all their family and friends who have joined with them. And we have some competing things on our schedule this morning, including some highly classified briefings that'll take place and votes on the floor. So, excuse us if we look like we're in a hurry to move from place to place, but that's the nature of our job.

The nominees include Judge Jonathan Grey, Eastern District of Michigan; Julia Kobick, District of Massachusetts; Judge Rita Lin, Northern District of California; Judge Ramon Reyes, Eastern District of New York; Judge James Simmons, Southern District of California; Amy Solomon, Assistant Attorney General for the Office of Justice Programs. Congratulations to all.

We have several nominees who will be introduced by our Senate colleagues. I will personally introduce Ms. Solomon. Before I do, I want to comment briefly on our judicial nominees. They represent a continued commitment of the President and Senate Democrats to identify and nominate highly qualified individuals ready to serve on the first day in hearing cases, preside over trials, and promote the administration of justice.

Four of the five judicial nominees are sitting judges, two on State trial courts, two as Federal magistrates. All five currently litigate or have litigated on behalf of the State and Federal Government entities. Four of the five have been prosecutors. In short, they have already demonstrated ability and commitment to the rule of law.

It is my pleasure to introduce, particularly, Amy Solomon, nominated to lead the Office of Justice Programs in the Department of Justice. Known as OJP—OJP, it is tasked with providing Federal leadership and assistance on matters relating to criminal and juvenile justice. Importantly, this includes major financial support through various grant programs to State and local law enforcement, funding the police as well as funding of victim service programs and other crucial efforts. Under the previous administration, the former President never put forward a nominee for this position, even though the position plays a critical role in protecting American families in their homes.

Ms. Solomon's knowledge of OJP and her work there is second to none. She served as Principal Deputy Assistant Attorney General for this position, and before that, she spent 7 years in this Office in career and political roles. In addition to her work at Justice Department, she serves in key research and policy roles at nonprofits and foundations, including the Urban Institute.

Throughout her career, she sought to advance evidence-based, commonsense bipartisan solutions to fighting crime. From literally funding the police to building networks with law enforcement and victims' rights, her priorities in her career have highlighted why she's the right nominee. It's no surprise that she enjoys support across the ideological and political spectrum. I'll put the letters of support in the record without objection, and I'm looking forward to hearing from her.

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

But now I'll turn to our colleagues, first, to introduce those who are represented by them in the list of nominees. Looking at the order, I think, Senator Warren, you would be first.

Senator WARREN. Thank you very much, Chairman Durbin and Ranking Member Grassley.

Chair DURBIN. I'm sorry——

Senator WARREN. I appreciate——

Chair DURBIN [continuing]. I'm sorry. I forgot the most important man on the panel.

Senator GRASSLEY. Why don't you——

Chair DURBIN. Senator Grassley.

Senator GRASSLEY. Why don't you finish, and——

Senator WARREN. Senator——

Senator GRASSLEY [continuing]. Then I'll speak.

Senator WARREN. Senator Grassley, I of course want to wait and hear from you.

Senator GRASSLEY. Well——

Chair DURBIN. I'm sorry.

Senator WARREN. But when Senator Durbin calls on me, I try to respond.

Senator GRASSLEY. Okay. Well, no problem. No problem. You worry too much about it. We've got a good relationship. You don't have to worry about me.

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

Anyway, congratulations to the five district court nominees. I want to speak just a little bit about how I approach asking ques-

tions of these nominees. When we're deciding what cases or articles to ask you about, we're trying to figure out how you'll approach cases as a judge. Every nominee says that they'll follow Supreme Court and circuit court precedent, but judges have different views about when cases are binding, so we look at nominees' records to see how they've handled the issue in the past.

We also want to see how nominees will exercise the discretion that they'll have as district court judges. Important issues decided every day in the courts around this country come down to simply judgment. Sometimes I agree with the decisions I ask about. Sometimes I don't. But it's helpful to understand how you, as nominees, think about them, even if we disagree. Hopefully, we can have a productive conversation today. Welcome to each of you.

Chair DURBIN. Thank you, Senator Grassley. And now Senator Warren.

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

Senator WARREN. Thank you very much, Chair Durbin, and thank you, Ranking Member Grassley. I appreciate the opportunity to come before you to introduce Ms. Julia Kobick, who is a nominee to the district court in Massachusetts. Senator Markey and I were proud to recommend her to President Biden for appointment to the Federal bench.

She is a native of the Commonwealth, and she earned a bachelor's degree from Harvard College before beginning her career as a public school teacher in New York City. While teaching various subjects to second-and third-grade students, Ms. Kobick earned a master's in elementary education at Pace University. She would go on to continue her education at Harvard Law School, where she served on the Harvard Civil Rights-Civil Liberties Law Review.

Following law school, Ms. Kobick completed clerkships at every level of the Federal judiciary, first as a clerk to Judge Dennis Saylor on the district court of Massachusetts, then as a clerk to Judge Michael Chagares, who is now Chief Judge of the Third Circuit Court of Appeals and is here today to support Ms. Kobick's nomination. And finally, Ms. Kobick clerked for the incomparable late Justice Ruth Bader Ginsburg of the U.S. Supreme Court.

Now, with these impressive credentials, Ms. Kobick could have pursued any number of different legal opportunities. She chose to take her talents to the Massachusetts attorney general's office and dedicate her career to the people of our great State of Massachusetts. From 2013 to 2021, Ms. Kobick worked as an assistant attorney general in the constitutional and administrative law division. In this role, she worked on important cases involving health care access, child welfare, and constitutional issues.

In the summer of 2021, Ms. Kobick was elevated to the role of deputy State solicitor and has primarily handled civil and criminal appellate litigation. Ms. Kobick is a rare legal talent, and her nomination is widely supported by members of the Massachusetts legal community, her fellow Supreme Court clerks, and even past courtroom adversaries. In fact, in a letter submitted to this Committee on behalf of several opposing counsels, they describe her as, quote, "first-rate legal abilities and intellect." They go on to say, quote,

"All of us enjoy working with and against her, even when our parties' interests directly clash." I am sure all of us in this body would appreciate having that kind of reputation.

Current and former members of the Massachusetts State judiciary have endorsed Ms. Kobick's nomination, declaring that her, quote, "integrity, temperament, and character make her well suited to be a judge." And every Massachusetts attorney general dating back to 1987 has written in support of Ms. Kobick, collectively praising her, quote, "tireless dedication, her keen analytical skills, her superb writing skills, and her sound judgment." Ms. Kobick's qualifications and character are beyond reproach, and I am proud to express my support for her nomination to the district court in Massachusetts.

I want to congratulate Ms. Kobick on this achievement. I want to also recognize her husband, Fiery Cushman, who is with us today; her two daughters, Nell and Linnea, who are here with us, as well, who will be taking notes on the proceeding; and her parents, Dan and Laurie Kobick; and all the rest of her colleagues and friends who came here to support her today. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Warren. Our Democratic leader has arrived, and I know his schedule's very hectic. We're going to give him an opportunity to speak at this moment.

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

Senator SCHUMER. Thank you, Mr. Chairman. And let me thank you, Senator Grassley, and all the Members of this great Committee for the opportunity to come before you and introduce a truly standout nominee to the Federal bench, Ramon Reyes. Soon you will learn why Mr. Reyes is an outstanding jurist and, I'm confident, will join me and President Biden in understanding precisely why he's a uniquely qualified—a uniquely qualified fit for the Eastern District.

The first thing to know about Mr. Reyes is he's here with some very important guests: his wife, Jane, and his two law clerks and case manager, Barbara, Alex, and Miriam. Welcome. Thank you for your good work.

And if confirmed, Ramon Reyes would be only the second Hispanic man to sit on the Eastern District, an important step to making sure our courts reflect the diversity of this district, one I am proud to say is one of the most diverse districts in the Nation, and I live there. And you know why else I'm certain Ramon Reyes will make an excellent judge? Well, he's from Brooklyn.

[Laughter.]

Brooklyn's having a pretty good day today. And what more does one need to know? And, dare I say, our track record of high-caliber judges can hold its own against any other place in America. He's also, I am proud to say—even though he's from Brooklyn, as am I—we are Yankee fans, though that team is in the Bronx. But we have stuck with the Yankees.

Now, in all seriousness, Judge Reyes's resume is as broad as it is deep. A graduate of a small school in Tompkins County you may have heard of, Cornell; of Brooklyn Law School and NYU, he began

his career clerking for the very same court he now sits on. Beyond his clerkship, Judge Reyes has served as an attorney in private practice, a Federal prosecutor in the famed U.S. Attorney's Office in the Southern District of New York, a lecturer at Brooklyn Law School, and as a U.S. magistrate judge, where he has presided over 33 trials and 15 jury trials.

So, he's done it all. His experience is broad and deep. And every step of the way, Judge Reyes made sure the law works equally for all Americans, from the most privileged to the most impoverished.

He has fought to protect voting rights and accessibility to the ballot box. He has worked to protect workers from discrimination. He has advocated for consumers victimized by health care fraud. And throughout his career, he's been a teacher and mentor and advocate for the next generation of Latino lawyers and jurists. In short, our courts need people like Judge Reyes. I have been proud to work with many of you over the last 2 years in advancing nominees who are not only qualified but also break the pattern of nominees we've grown accustomed to for so long.

Together, together the Senate has confirmed more people of color, more women, and more nominees from unique backgrounds than under any other administration. And in the years to come, we will continue maintaining a laser focus on bringing balance and impartiality back to our courts. We have more work to do, but I'm proud of the progress we have made.

So, I want to thank Judge Reyes for being here. I want to congratulate him for his nomination. I want to thank the Committee, as always, for indulging me and realizing my schedule and apologize that I have to leave, but thank you for the opportunity. I'm proud to present Judge Reyes.

Chair DURBIN. Thank you very much, Senator Schumer. I believe that Senator Stabenow may be next.

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

Senator STABENOW. Well, thank you very much, Mr. Chairman and Ranking Member, and I think we're all so pleased to have the opportunity to present our nominees to you today. So, thank you so much.

I'm honored to be here with Senator Peters to introduce Judge Jonathan J.C. Grey, whom President Biden nominated to serve as the U.S. District Judge for the Eastern District of Michigan. Judge Grey is here today with his wife, Theda Marie; his mother, Renee; his sister, Paulette; and other family and friends. We welcome all of you. We're so glad you're here.

Judge Grey is an outstanding choice to serve the people of Michigan, because he's, frankly, been serving the people of Michigan. Judge Grey is currently serving as United States magistrate judge for the Eastern District of Michigan. As a magistrate judge, Judge Grey has presided over both civil and criminal cases. Before that, he served as an assistant United States attorney in the Eastern District of Michigan and the Southern District of Ohio, where he prosecuted criminal offenses. I won't ask you who you rooted for in the Ohio State-Michigan game.

[Laughter.]

All right. Yes. Okay. Go Blue, right? Okay.

[Laughter.]

During the past 10 years, 95 percent of Judge Grey's practice has been in the Federal courts, whether as a magistrate judge or as an assistant U.S. attorney. He also has experience in the private sector, working as an associate at a law firm in Chicago, where he practiced labor and employment law.

To add to his impressive legal background, Judge Grey served as a law clerk for the late Judge Damon J. Keith, beloved judge in Michigan, on the United States Court of Appeal for the Sixth Circuit, where he drafted opinions on both civil and criminal cases. He also clerked for Judge W. Louis Sands on the United States District Court for the Middle District of Georgia, managing more than 200 civil and criminal cases. Given his experience, it's no surprise that the American Bar Association Standing Committee on the Federal Judiciary unanimously found him to be "well qualified" for this position.

Judge Grey was born in Mississippi and is a proud graduate of Morehouse College and the Georgetown University Law Center. And in the spirit of those two institutions, Judge Grey is a deep believer in giving back. He's active in the Wolverine Bar Association, the Federal Bar Association, serving on the National Law Clerk Committee.

He's an executive board member of the Urban League of Detroit and Southeastern Michigan and a mentor with the Franklin County Children Services Simba Mentoring Program. In fact, he was named their Mentor of the Year in 2019. And he has strong ties to his alma mater, serving as an admissions interviewer at Georgetown, remaining active in the Morehouse College Alumni Association's Detroit chapter.

Bottom line, Mr. Chairman, I can't think of any better place for Judge Grey to be than to continue serving the people of Michigan on the United States District Court for the Eastern District of Michigan, and I would strongly urge the Committee to support him, and I look forward to supporting his nomination on the floor of the Senate. Thank you.

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

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

Senator MARKEY. Thank you, Mr. Chairman, very much; Ranking Member Grassley. I'm pleased to sit here with Senator Warren to introduce Julia Kobick, our nominee for the United States District Court for the District of Massachusetts. Senator Warren and I work very close as partners on judicial nominations, and once again, it has resulted in an outstanding candidate for the Federal court in Boston.

Ms. Kobick is joined here today, as Senator Warren said, by several members of her family and friends. They include her husband, Fiery Cushman; her two daughters; her parents, Dan and Laurie Kobick; and Chief Judge Michael Chagares of the U.S. Court of Appeals for the Third Circuit, for whom Ms. Kobick clerked. Ms. Kobick's in-laws, Lynnwood Andrews and Jack Cushman, are proudly watching from home.

Ms. Kobick has been a rising star in Massachusetts legal circles. Her quick ascension to the Federal bench should come as a surprise to no one. She's a Massachusetts native. She graduated from Harvard College and Harvard Law School magna cum laude. She clerked on the Massachusetts Federal court and then for Judge Chagares on the Third Circuit. From there, she reached the pinnacle: clerking for the late great Justice Ruth Bader Ginsburg on the U.S. Supreme Court.

Ms. Kobick then began a legal career devoted entirely to public service. In 2013, she joined the Massachusetts attorney general's office. Since 2015, that office, the best attorney general's office in the country, has been headed by our Governor-elect, Maura Healey. It is an office dedicated to protecting consumers, fighting fraud and corruption, and safeguarding the environment, workers, and civil rights.

There, Ms. Kobick energetically advanced those goals. She began as a trial attorney, and since 2021, she has served as deputy State solicitor. And in that position, she has briefed and argued many cases before the Massachusetts appellate courts: cases that involve cutting-edge and complex issues of constitutional law and statutory interpretation. At the same time, true to her roots as a public school teacher before attending law school, Ms. Kobick has mentored public interest oriented law students at my alma mater, the Boston College Law School, and has served as a mentor with The Appellate Project, an organization that matches attorneys with law students of color interested in appellate advocacy.

Current and former members of the Massachusetts State bench have extolled Ms. Kobick's virtues. They describe her as exceptionally talented, having an unquestionable integrity, an impeccable reputation, and the right temperament and intellect, work ethic, and humility to serve as a Federal district court judge. Senator Warren and I couldn't agree more. We look forward to Ms. Kobick's hearing today, a speedy confirmation, and the start of what undoubtedly will be a long and distinguished career on the Federal court. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Markey. Senator Peters.

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

Senator PETERS. Well, thank you, Chairman Durbin and Ranking Member Grassley, for holding this hearing. I'm pleased to introduce, along with my colleague and friend, Senator Stabenow, an exemplary Michigander and nominee for the Federal bench, Judge Jonathan Grey, to serve on the United States District Court for the Eastern District of Michigan. I also want to take a moment, as well, to acknowledge Judge Grey's family here today: his wife, Theta-Marie; his sister Paulette; and his mother, Renee. It's great to see you. Welcome to Washington to be here for a big day for the family.

Judge Grey has served for the last year and a half as magistrate judge for the United States District Court for the Eastern District of Michigan. Before being appointed a magistrate judge, he worked for nearly a decade as an assistant United States attorney. Judge Grey is a graduate of Morehouse College and Georgetown Univer-

sity Law Center and has completed clerkships at the Federal district and circuit levels.

Throughout his career, Judge Grey has earned praise for his work. A Federal judge before whom Grey has often appeared described him as well prepared, poised, seemingly unflappable, and unusually gifted even among very gifted peers. One colleague pointed to Judge Grey's intellect and strong work ethic, and another attorney described him as having "the ability to deal with people from all walks of life" and said that he approaches every case with diligence and a desire for fairness.

Beyond the praise he has received, the broad range of Judge Grey's prosecutorial work during his decade as an assistant U.S. attorney is notable. Judge Grey successfully prosecuted matters involving serial domestic abuse, arson, illegal firearm possession, international narcotics trafficking, and domestic bank fraud, among other wide-ranging work. Judge Grey also led a 4-year investigation that uncovered a scheme of fraudulent opioid prescription leading to guilty pleas from 10 defendants.

Judge Grey's work on behalf of the broader public, particularly young people and aspiring attorneys, is also quite remarkable. For example, Judge Grey has worked to create an in-school mentoring program for boys in the city of Detroit. He also has devoted extra time to assist students with test and bar exam prep, especially for first-generation college students from disadvantaged backgrounds.

Without question, Judge Grey is accomplished and has critical attributes for Federal judges. He is committed to upholding the rule of law, has strong interpersonal skills, and treats everyone with both dignity and respect. I'm confident that Judge Grey will be confirmed by the Senate and honorably represent the people of Michigan and our country on the Federal bench and urge this Committee's support of his nomination. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Peters. We have two nominees before us today from the State of California, and I'd like to recognize Senator Feinstein, initially. Senator.

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

Senator FEINSTEIN. Oh. Thank you very much, Mr. Chairman. I'm very pleased this Committee is considering two nominees to serve on Federal districts in California. Judge Rita Lin has been nominated to serve on the Northern District, and Judge James Simmons has been nominated to serve on the Southern District. These nominees are both experienced judges. They will make excellent additions to the Federal bench.

Judge Lin grew up in the Bay area. She received her bachelor's degree from Harvard College and her law degree, magna cum laude, from Harvard—excuse me—from Harvard Law School, where she was an editor on the Harvard Law Review. After law school, Judge Lin served as a law clerk on the United States Court of Appeals for the First Circuit.

She then moved back to San Francisco to join the law firm Morrison & Foerster, where she eventually became a partner. Judge Lin specialized in complex civil litigation. She handled cases ranging from patents and copyrights and trade secrets to nationwide

class action lawsuits. She also maintained an active pro bono practice. She really was well specialized and diverse, as well.

In 2014, she joined the United States Attorney's Office for the Northern District of California. She prosecuted a wide range of significant criminal cases in Federal court involving public corruption, organized crime, child pornography, and drug trafficking. In 2018, Judge Lin was appointed to serve as a State court judge on the San Francisco Superior Court, where she currently presides over criminal cases. Judge Lin is an experienced jurist with a deep respect for the law, and I really believe she's going to be an asset to the Northern District bench.

I'm also pleased the Committee is considering Judge James Simmons today, in the Southern District. Judge Simmons grew up in Inglewood, California. He earned his bachelor's degree from the University of California at Berkeley and his law degree from Golden Gate University School of Law. After law school, Judge Simmons became a deputy city attorney for the San Diego city attorney's office.

He then joined the district attorney's office as a deputy DA. In 12 years as a prosecutor, he handled a wide range of challenging criminal prosecutions, including homicides, gang shootings, robberies, and sexual assault cases. Eight of those years were spent in the gang prosecution unit, where he prosecuted the first criminal gang conspiracy charge in California.

In 2017, Judge Simmons was appointed to the San Diego Superior Court, where he currently serves as a supervising judge for the North County branch of the court. In his time on the bench, Judge Simmons has demonstrated his commitment to impartiality and to showing respect to those appearing before him.

So, Judge Lin and Simmons are both highly qualified candidates. If confirmed, they will continue to demonstrate, I believe, their character and commitment to equal justice under the law. I thank you, Mr. Chairman, for holding this today, and I look forward to these two qualified nominees. Thank you.

Senator PADILLA [presiding]. Thank you, Senator Feinstein. I now have the privilege of also offering introductory remarks for our two nominees from California and will apologize for a little bit of the repetition, but it's just an indicator of how proud and enthusiastic both Senator Feinstein and I are of Judge Lin and Judge Simmons. I also want to thank Ranking Member Grassley for the indulgence, here.

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

Senator PADILLA. It's an honor to introduce what I believe are two exceptional nominees to serve on the Federal district courts in California, beginning with Judge Rita Lin. Judge Lin is a nominee to serve on the U.S. District Court for the Northern District of California. She earned her undergraduate degree from Harvard College and her law degree from Harvard Law School.

After clerking on the First Circuit Court of Appeals for Judge Sandra Lynch, she started her legal career as an associate at the law firm of Morrison & Foerster in San Francisco, eventually being promoted to partner, but in 2014, she chose to leave private prac-

tice to pursue a career in public service, joining the U.S. Attorney's Office for the Northern District of California. In 2018, after 4 years, Judge Lin was appointed to the San Francisco Superior Court, where she now presides over felony and misdemeanor trials.

So, as you can see, between her experience as a prosecutor and her decade as a civil litigator, Judge Lin has experience with both civil and criminal litigation. And at every step of her career, she's been guided by her dedication to public service. Whether by maintaining an extensive pro bono practice in the early years of her career or by leaving behind the promise of a lucrative career in private practice in favor of pursuing public service, Judge Lin has proven that she has the heart and the mind worthy of serving as a Federal district judge.

And, as someone who has lived her entire life with a hearing disability, she also brings with her a unique perspective from a community that is not often represented in our Nation's Federal judiciary. So, we are fortunate not only to have a nominee with the judicial qualifications of Judge Lin but someone with the voice, the personal experience, and the passion for public service that she brings to the table. And I'm so proud to support her nomination.

Today, I'm also privileged to introduce Judge James Simmons, Jr., President Biden's nominee to serve on the U.S. District Court for the Southern District of California. As you heard, he was born in Inglewood, California. Judge Simmons was raised by a single mother in the proud working-class and multiracial community of South Los Angeles, a community that has also faced significant challenges due to decades of underinvestment. Through Judge Simmons' hard work, sacrifice, and an unwavering desire to succeed, he became the first person in his family to graduate from college, and he pursued a life in public service.

He earned his undergraduate degree from UC Berkeley and his JD from the Golden Gate University School of Law. Soon after, he became a deputy city attorney in San Diego, followed by serving as a deputy district attorney in San Diego County for over a decade. In 2017, he was appointed to the Superior Court of San Diego County, where he serves today.

Now, I'll make a brief personal note, because we've talked a lot in this Committee about further diversifying the Federal judiciary through different career trajectories and different perspectives that people ought to bring to the bench. I know I've spoken repeatedly about the disproportionate representation of prosecutors, as opposed to defenders, in all levels of the Federal judiciary. So, it may raise some eyebrows from folks looking at my record, of why I speak so highly of a prosecutor being nominated, in Judge Simmons.

And so I asked Judge Simmons, at an earlier opportunity, why he wanted to become a prosecutor in the first place, and he told me pretty straightforward and compellingly that it's because that's where he could do the most good and because he felt it was important for people like him to bring their experiences and backgrounds to that role, with an understanding for defendants with backgrounds similar to his own. And I'm proud that today Judge Simmons is prepared to bring his good work and life experience to the U.S. District Court for the Southern District of California. I know

California will be a stronger, more just place because of his perspective, and I thank Chairman Durbin, Ranking Member Grassley for embracing the talk of diversity in the Federal judiciary in the proceedings of this Committee.

Both Judge Lin and Judge Simmons are shining examples of the variety of perspectives that we have been looking for. And, to be sure, both have had what many would consider traditional career paths to the Federal bench, but their nominations represent our commitment to true diversity in all its forms—diversity not just in paths to service but in background, perspective, and lived experience. Their voices matter, and the communities and backgrounds that they represent matter, too. And I'm thankful for both Judge Lin and Judge Simmons for their service and to their families for allowing them to serve our Nation. I urge my colleagues to advance their nominations.

And with that, let me now ask all the nominees to please stand and come forward today as I administer the oath. Please raise your right hands.

[Witnesses are sworn in.]

Thank you. You may be seated, and please let the record reflect that all the nominees have answered in the affirmative. Colleagues, we'll now proceed to opening statements by each of the nominees. I'll let you catch your breath, here, and we will begin with Judge Grey. Please proceed.

STATEMENT OF JONATHAN JAMES CANADA GREY, NOMINATED TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Judge GREY. Good morning, and thank you, Senator Padilla, for presiding over this hearing. Good morning, Ranking Member Grassley and to all Members of this Committee. It is an honor to appear before you. I greatly appreciate President Biden for nominating me to serve as a United States district court judge. I also want to acknowledge the warm and kind support and thoughtful words from my home-State Senators, Senator Stabenow and Senator Peters. Thank you also to the Members of their Judicial Selection Committee.

I want to acknowledge three judges, two of whom have played pivotal roles in my life. I had the great privilege of clerking for the late great Judge Damon J. Keith on the Sixth Circuit, and he taught me so many life lessons that I reflect upon every day, and he remains a member of my family. I also had the great privilege of clerking for Judge W. Louis Sands, and his humility and grace are also items that I treasure with me and take into account when I'm going about judicial decision-making. I want to acknowledge Judge Denise Page Hood and her 28 years of service as an active judge and her decision to take senior status, which created this vacancy for which I have been nominated.

I want to acknowledge many of my family members. I have a large and supportive network, very close family members, many friends and colleagues who are not with me in spirit—who are with me in spirit but are not with me physically. I also want to acknowledge my grandmothers, who have passed away, and two aunts, one

in the last year and one last week. Their life lessons, their wit, and their grace are also principles that live greatly in my heart.

I have five siblings: three older siblings, three younger siblings. I can't name all of them, but I appreciate all of them, and I know they are working. I can name them, but I won't do it for time purposes today. But I know that they are watching when they are able to take breaks at work. I appreciate them.

I appreciate my parents: my father, my mother, and my stepfather. My mother is here with me today. Mom, I thank you so much for your hard work and your guiding principles of hope, faith, and determination that, no matter our circumstances, we could achieve anything. I thank you for raising me and my three older siblings on your own and doing whatever it took to make our dreams a reality. I also want to acknowledge my sister Paulette, who is in the room with me. She's a public servant in her own right. She's a physician in Baton Rouge. I appreciate her for making the journey.

Most importantly, my wonderful and incredible wife, Theda. Thank you so much for your love and joy. It is an honor to walk with you, alongside you each day. Thank you also for your service in teaching young minds.

I want to conclude by thanking the communities of possibility that have nurtured me and supported me along this path. Those are the cities of Baton Rouge, where I grew up; the city of Detroit, where I've grown so much in adult life; and also the city of Chicago and Columbus, Ohio. Senators, I look forward to answering your questions today. Thank you.

[The prepared statement of Judge Grey appears as a submission for the record.]

Senator PADILLA. Thank you very much. Ms. Kobick.

STATEMENT OF JULIA E. KOBICK, NOMINATED TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS

Ms. KOBICK. Thank you, Senator Padilla, Ranking Member Grassley, and all the Members of the Committee. It's a privilege to be here with you today, and I thank you for considering my nomination and welcoming me and my fellow nominees.

Senator PADILLA. Okay. Can you pull the microphone just a tad bit closer to you? Thank you.

Ms. KOBICK. I'm grateful to President Biden for the tremendous honor of this nomination. I also want to thank the Members of the Advisory Committee on Judicial Nominations who first recommended me for this role and thank Senator Warren and Senator Markey for recommending me to the President, for their very warm introductions this morning, and for putting their faith in me.

I am delighted to introduce you to my family members who are here today. First, my husband and best friend, Fiery Cushman. He's the best chef a family could hope for, and he's also brilliant, humble, and keeps me grounded. I would not be here today without his steadfast love and support. My two incredible daughters, ages 7 and, as of yesterday, 6, are here, as well. They are kind and generous and curious girls, and I'm proud of them every single day.

My parents, Dan and Laurie Kobick, are here. They've always believed in me, they've made sacrifices for my education, and they've taught me the importance of public service. I'm grateful also to the many family members and friends who are supporting me online, including my in-laws, Jack Cushman and Lynnwood Andrews; my brother Bryan; my brothers-and sisters-in-law Holloway, O'Neill, and Marie.

I also want to thank the three legal giants who gave me my start in the law: Chief Judge Dennis Saylor; Chief Judge Michael Chagares, who is here with me today; and the late Justice Ruth Bader Ginsburg. They gave me the very best examples of diligent and wise judging, and their guidance and friendship have been such a tremendous blessing in my life.

I also want to acknowledge my professional family. It has been my great privilege to work with all of the public servants at the attorney general's office this past decade. Their dedication to the people of Massachusetts inspires me day in and day out, and I've had the great fortune to grow as a lawyer in the legal community in Massachusetts.

There are so many people who have helped me get to this point today: professors, mentors, judges, Government officials, opposing counsel, co-counsel. And I've learned so much from each of them and value their commitment to our joint project of justice. Thank you again, Senators, for having me here today, and I look forward to answering your questions.

[The prepared statement of Ms. Kobick appears as a submission for the record.]

Senator PADILLA. Thank you. Judge Lin.

STATEMENT OF RITA F. LIN, NOMINATED TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Judge LIN. Senator Padilla, Ranking Member Grassley, Members of the Committee, thank you for taking the time to consider my nomination. I am grateful to President Biden for the honor of this nomination and for giving me the chance to serve my country again. I thank Senators Feinstein and Padilla for their support and warm introductions.

I would not be here but for the courage and hard work of my parents, who emigrated from Taiwan in the 1960's. Like so many others, they came here to pursue the American dream and the freedom and opportunity that our country offers. They met and fell in love here, in the Nation's Capitol, in Washington, DC, before moving to California, where I was born.

I am forever grateful for all the ways in which they sacrificed to give me a better life. My mom could not be here today in person for health reasons, but I know she is watching remotely. My dad passed earlier this year, but I know he's watching from above and that he is here in my heart.

I'm joined by my husband, Chase, today. Ever since we met at the vending machine in our college dorm, he has been my best friend and biggest cheerleader. We have with us our two boys, who are 10 and 13. They keep me grounded, sane, and up to date on the latest YouTube videos. I also want to introduce Chase's par-

ents, Marcia and Ty, who are like a second set of parents to me; and my good friends Patricia, George, and Andy, who have sustained me through more than two decades of friendship.

Finally, thank you to everyone supporting me remotely, my San Francisco Superior Court family, my friends from the United States attorney's office and Morrison & Foerster, my church community, the ladies of my running group, and all of my friends and family. I look forward to answering the Committee's questions.

[The prepared statement of Judge Lin appears as a submission for the record.]

Senator PADILLA. Thank you. Judge Reyes.

STATEMENT OF RAMON ERNESTO REYES, JR., NOMINATED TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Judge REYES. Thank you, Senator Padilla, Ranking Member Grassley, and the Members of the Committee. It's indeed an honor for me to be here today. I'd like to thank Senator Schumer for his kind introduction and for recommending me to President Biden for nomination; Senator Gillibrand, for her support of my nomination; and, of course, President Biden for my nomination to be a United States district judge for the Eastern District of New York.

Senators, I've been a public servant for nearly all of my professional career, the last 16 of which I have served as a United States magistrate judge. I would welcome with the utmost humility and honor the opportunity to continue to serve our district, our country, as a United States district judge.

I'd like to thank the people with whom I've worked over the years: the faculty and administration of Brooklyn Law School; the late Honorable David G. Trager, for whom I clerked in the Eastern District; the people at O'Melveny & Myers, where I began my career as a young lawyer; my former colleagues in the United States attorney's office for the Southern District of New York, where I learned what it means to be a public servant; and, of course, my magistrate judge and district judge colleagues in the Eastern District of New York, from whom I've learned so much over the past 16 years.

I'd be remiss, Senators, if I didn't mention my extended family, in-laws, and friends who are watching across the country. I especially want to acknowledge my older sister Cara, who is watching from upstate New York, as well as my parents, my wife's parents, and my older sisters, all of whom are no longer with us. They've all blessed me with love and care and support over the years, and I thank them for doing so.

Physically present with us today are my law clerks, Barbara Rodriguez and Alex Mendelson; my courtroom deputy case manager, Miriam Vertus. I want to thank Barbara, Alex, and Miriam and all of my former clerks for their service to our court. Finally, I want to thank our sons, Ramon III and Henry, and my wife, Jane. Ramon and Henry are not here today, both having pressing work and educational commitments. Ramon and Henry are our inspiration and our joy.

And to my wife Jane, herself a career public servant, I can only say thank you, and I love you. Jane and I are best friends and one

another's champions. For her part, Jane has enabled me to become what I am today, and for that and everything else she has done for our family, I will be eternally grateful. Again, Senators, it's an honor for me to be here today, and I thank you for the opportunity to be considered for nomination, and I welcome your questions.

[The prepared statement of Judge Reyes appears as a submission for the record.]

Senator PADILLA. Thank you very much. Judge Simmons.

STATEMENT OF JAMES EDWARD SIMMONS, JR., NOMINATED TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Judge SIMMONS. Thank you very much, and good morning. Senator Padilla, I want to thank you, Ranking Member Grassley, and the other Members of this Committee. I would like to thank President Biden for this nomination. I would like to thank both of my home-State Senators, Senator Padilla and Feinstein, for not just their warm introductions but also for their support in recommending me to the President. I am truly blessed and honored by your support and confidence in me.

Of course, I would not be here today without the love and support of my best friend, my wife, Markecia. I met her 25 years ago, and during that 25 years, she has encouraged me, she has loved me, supported me, pushed me, and inspired me. I cannot imagine what my life would be like without her in it.

She blessed me with our two sons, who are both here today. They are 11 and 13. My oldest son missed his flag football championship game yesterday, so he was not happy to miss that game. They are missing school today, and he's not happy to be missing his advanced math and science classes, but I am so thankful that they are here to observe this proceeding. My sons are my greatest joy, and I love my family immensely.

With me in spirit today is my mother and my oldest sister. They are no longer with us. My mother taught us so many life lessons, so many lessons that brought me before this panel today. My two living sisters were unable to be here today, but they are watching remotely today. Growing up, we didn't have much, but we always had each other, and we had love, support, and faith. I want to thank them for their support.

I'd also like to thank my in-laws, the Wyatt family. All of my wife's family have shown me continuous love and support for the last 25 years. They have become my parents, my grandparents, my aunts. I sincerely thank them for the impact they've had on my life.

Finally, I would like to thank my San Diego Superior Court family for their encouragement and support. I know I have many members watching today, especially my North County family—excuse me—and my justice partners from North County. I know many of you, as I said, are watching today, and I appreciate all your support. Senators, I welcome your questions today. Thank you very much.

[The prepared statement of Judge Simmons appears as a submission for the record.]

Senator PADILLA. Thank you. Finally, Ms. Solomon.

STATEMENT OF AMY LEFKOWITZ SOLOMON, NOMINATED TO BE AN ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS

Ms. SOLOMON. Thank you, Senator Padilla and distinguished Members of the Committee. I'm honored to be here today as President Biden's nominee to serve as Assistant Attorney General for the Office of Justice Programs, and I want to thank Senator Durbin for the generous introduction.

I also want to thank my family for their love and support, always, and certainly throughout this process. I'm joined today by my wonderful husband, Michael, and my awesome 13-year-old daughter, Eva. My sons Gabe and Josh couldn't miss their college classes at the Universities of Wisconsin and Michigan, but I know they are cheering me on. My parents, Janet and David Lefkowitz, are watching from North Carolina. I am beyond grateful for their unconditional love and support.

My mom is my biggest cheerleader. She tries to keep up with every development in the field, and I am so relieved that she did not submit a letter to the Committee or bake brownies for everyone. I also want to recognize my brother, David; my father-in-law, Stuart, and his partner, Lisa; my late mother-in-law, Judy; my sisters- and brother-in-law, nieces, nephews, aunts, uncles, and cousins. I am so fortunate to have the love and support of a close family.

I also want to acknowledge my beloved work family. I've been working on criminal justice issues for more than 30 years, now, and I'm so lucky to have had amazing mentors over the years, including Frank Hartmann, Jeremy Travis, Laurie Robinson, and Karol Mason, the latter two of whom were actually Assistant Attorneys General for OJP. These four individuals taught me, through their example, to aim high, to keep eyes on the prize, to follow the data, and to always do what is right. The career team at OJP is an important part of my work family, too, and I have such admiration for my colleagues at the Department of Justice.

I've worked at OJP three times now, over the last 25 years, in both career and appointed positions. The first time was in the 1990s at the National Institute of Justice. I was a very junior staffer. I was sitting in a windowless cube, and I loved every minute of it. In those early days, I learned that Government could be creative and rigorous and dogged about finding solutions to help keep our communities safe, as we then tackled historically high rates of violent crime and pioneered some of the earliest national reentry issues.

My second stint was during the Obama administration, when I served as Director of Policy and Executive Director of the Federal Interagency Reentry Council, a cabinet-level body that focused on bipartisan and commonsense ways to improve the odds of successful reentry. And then in May 2021, I was called back to the Department as a Principal Deputy Assistant Attorney General, where I've been so fortunate to work with an outstanding team of service professionals. Despite my protests, several of the appointed leaders of OJP are here with me today, and they are a truly remarkable, dedicated, and expert set of leaders, and I am so honored to work with them.

In addition to my time at DOJ, I've spent 17 years working in nonprofit, think tank, and philanthropy settings, as well as a year as a VISTA volunteer at the Vermont Department of Corrections, which set me down this path in the first place. Over the years, I've worked on corrections reform and policing, prisoner reentry, juvenile justice, and efforts to reduce violent crime.

I've worked with law enforcement and corrections officials, victims' advocates, the research community, and people with lived experience. I've always worked with stakeholders from both sides of the aisle, and more often than not we found common ground and shared goals as we all seek a country with safe neighborhoods and where our children can lead full and joyful lives. The through line here is an honest, earnest commitment to bipartisan and evidence-based solutions and a focus on moving the dial on outcomes that really matter to people.

Since I've been back at OJP, I've focused on being a good steward of the Federal dollars, raising morale, and bolstering the dedicated career staff, leveraging our resources to help jurisdictions keep their communities safe and investing in research and data to inform policy and practice. I set a high bar and have very high expectations of the team and of myself. I try to bring out the best in people but also to hold us all to account.

I see the potential in OJP to serve as a think tank for the Department and an engine of innovation for the field—and always with the north star of safe and just communities. I thank you for considering my nomination and welcome your questions.

[The prepared statement of Ms. Solomon appears as a submission for the record.]

Senator PADILLA. Thank you, Ms. Solomon. Thank you to all of our nominees. We will now turn to questions from the Committee. Senators will have 5 minutes to ask questions of these nominees, and I will begin.

The first question is for Judge Lin. Now, if confirmed, you would be the only one of a few candidates nominated to a Federal judgeship who is open about living with a disability. I'd love it if you could spend a moment talking to the Committee about your hearing disability, how it's affected you professionally, and, in particular, how it has shaped you in your role as a judge.

Judge LIN. Thank you for the question, Senator Padilla. I lost most of my hearing when I had a childhood illness as a toddler. I'm almost completely deaf in my right ear. I am hearing impaired in my left ear. I have worn hearing aids in both ears since I was 5 years old.

Today, thankfully, through the miracle of modern technology, my hearing is rarely an issue for me, particularly in a quiet environment like a courtroom. But for most of my childhood and into my young adulthood, it was an obstacle for me, and looking back, I can also see how formative it was. I learned to listen closely. I have to listen to every word, out of necessity. And as a child, I also had to recognize that no matter how hard I studied or how good I was at school, it was always possible that I literally missed something because I didn't hear it.

And I think both of those mental habits, listening closely and recognizing the possibility that I might be missing critical informa-

tion—those mental habits have served me well throughout my professional career as a civil litigator, as a Federal prosecutor, and, most of all, now as a superior court judge. And I hope that they will serve me well on the Federal bench, as well, if I am so fortunate as to be confirmed. My hearing was an obstacle for me, but looking back now, I am grateful for the journey it took me on and the lessons it taught me.

Senator PADILLA. Thank you. Next question for Judge Simmons. I kind of teased this in my introduction of you. Before your nomination to the San Diego County Superior Court, you served as a prosecutor, where you thought you'd be able to do the most good. So, can you share a bit more about your background in public service and how serving as an advocate in the courtroom has prepared you to serve on the Federal bench?

Judge SIMMONS. Thank you very much for the question, Senator Padilla. As you stated, I started as a deputy city attorney for one year, as a local city prosecutor, and then I worked for the San Diego district attorney's office for the 12 years.

For eight and a half of those years, I was a gang prosecutor, meaning—excuse me—meaning I prosecuted individuals who were accused to be gang members who committed violent crimes. That was an experience that I enjoyed, because I felt like I was able to help communities similar to the one I grew up in that were plagued by a small set of individuals that were committing a large portion of crimes.

I learned to work with individuals from the community. I routinely met with those who were victims of crimes in their own communities, in their own homes and made sure I expressed to them that they were entitled to justice like everyone else was. So, that was an important experience for me, making sure that I did justice properly and with the highest ethics and making sure that I protected communities similar to the communities I grew up in.

That prepared me for a role on the San Diego Superior Court bench because I was able to get along with all sides. I developed a great reputation as a deputy DA. I have continued that reputation as a superior court judge. I've been a judge for 5 years, but I am now the supervising judge for the North County branch of the San Diego court. I am the most junior supervising judge for the entire county, and I did that because of the respect and my work ethic that I have shown.

Senator PADILLA. Thank you very much. And a final question for Judge Lin. Again, you bring a tremendous amount of both private experience and public experience to the job. How has your time serving as judge in your current capacity formed your approach to service, particularly as you look to move to the Federal bench?

Judge LIN. Thank you, Senator Padilla. I am currently a San Francisco Superior Court judge. I have been a judge for 4 years now. In my first 2 years, I handled a busy felony criminal calendar: 200 to 250 matters a week. I am now in a criminal trials assignment, where I've handled a whole range of trials, from murders to rape to child sex abuse, but in each case, in the end, my approach is the same. I diligently listen to the arguments of the parties and review the submissions. I review the factual record and the applicable law. I listen with an open mind to the evidence presented to

me, and I render a ruling that is fair and impartial, based on the law and the facts.

It is a priority for me and my courtroom to set a tone for everyone in my courtroom to feel welcome and invited to address the Court and to feel seen, heard, and respected at every stage of the process. Those are all skills that I hope to take with me to the Federal bench if I am confirmed.

Senator PADILLA. Okay. Thank you very much. We both welcome back and I now turn to Senator Grassley for questions.

Senator GRASSLEY. Thank you. I had to step out a minute to do a live radio program. I'm going to start with Ms. Kobick. I want to ask you about your work on cases involving Second Amendment, specifically about the *Caetano* case. The Supreme Court held in *Heller*, as you know, that the Second Amendment protects the right to own arms that were, quote, "not in existence at the time of the founding." It rejected a claim to the contrary as, quote unquote, "bordering on the frivolous," but in, a few years later, *Caetano*, you argued that stun guns were too modern, so that they were protected, so I'd like to have you explain your thought in regard to that, whether it was consistent with *Heller*. And, at the same time, could you explain why the briefing didn't address the Supreme Court's statement that the Second Amendment protected arms, quote, "not in existence at the time of the founding"?

Ms. KOBICK. Thank you for the question, Ranking Member Grassley. In my capacity as assistant attorney general, I was assigned to write—co-author the brief in opposition to certiorari in the *Caetano* case. The initial decision to bring charges was made by the district attorney, and the district attorney handled the case at the trial court level and on appeal in the Supreme Judicial Court. So, our role—the attorney general's office took over representation of the case when the case reached the Supreme Court, and our argument in the brief was simply that the Supreme Court should deny the petition for a writ of certiorari.

I certainly understand the Supreme Court summarily reversed the SJC's decision in that case, stating that the SJC's decision was inconsistent with *Heller* in three respects, and I want to affirm, Senator, that in every case I've handled involving the Second Amendment, my arguments have been based on *Heller* and *McDonald*, and I would adhere to all of the Supreme Court's precedent on the Second Amendment, including its recent decision in *Bruen*, if I were so fortunate as to be confirmed.

Senator GRASSLEY. Okay. Thank you. Now, Mr. Reyes, I want to ask about a recent order reversing a bail package that you had approved in *Sternquist*. The defendant was charged with possessing fraudulent badges and credentials for Federal agencies. The government claimed the defendant had more than 50 fraudulent law enforcement badges. The district court judge says that the defendant had, quote, "substantial criminal history, including felony convictions for identity theft, carrying a concealed weapon, grand larceny, possession of stolen property, and possession of tools for forgery, counterfeiting," end of quote. The defendant also had a history of not complying with court orders.

When her release was searched, the government found numerous firearms, including two fully automatic rifles. I understand that

there had been errors in the defendant's medical care, but the district court judge made a compelling case for flight risk and community danger, so I'd like to have you explain your thinking on granting bail in that case.

Judge REYES. Thank you, Ranking Member Grassley. I've handled over 850 bail applications in my 16 years as a magistrate judge, and in each instance, I follow the Bail Reform Act which Congress enacted and set forth the standards to apply, including ensuring the safety of the community, guarding against risk of flight, as well as other factors. In Ms. Sternquist's case, she presented with significant health issues, including being in a wheelchair, not having any mobility, significant—other significant health issues that I don't want to mention on the record but that were caused by the treatment that she received at the Metropolitan Detention Center.

And the bail package that I approved had significant conditions on it that prevented or would have prevented the danger to the community and any risk of flight, including a third-party custodian, home detention with electronic monitoring, no access to the internet to continue any alleged criminal activity. So, in every bail determination I make, I look at the case individually, and where the circumstances are warranted, I grant bail with the appropriate terms and conditions that protect the community and ensure that the defendant will not flee.

Senator GRASSLEY. Yes. My time's out, so, Mr. Simmons, I'm going to have to submit my question to you for answer in writing. Thank you.

Senator PADILLA. Thank you. Senator Feinstein.

Senator FEINSTEIN. As I sit here and listen—and there are many, many hearings—what interests me is what experience in your life has shaped you the most, to be able to contribute to the job that you are here to hopefully receive. So, could we begin here and go right down the line? I want to hear the personal story, quickly, from each of you, as to what has been most important to you.

Judge GREY. Thank you, Senator Feinstein. I've been shaped by experiences growing up in Baton Rouge, Louisiana in diverse communities of different means. I've been shaped by differing accesses to education. I have been shaped by encountering individuals of different cultures. And those experiences I carry with me as a sitting Federal magistrate judge, to keep an open mind, to not prejudge any case before me, and to decide each case fairly and impartially.

Senator FEINSTEIN. Thank you. Good answer.

Ms. KOBICK. Thank you, Senator. I'll share two——

Senator FEINSTEIN. Could you raise your mic a little?

Ms. KOBICK. Sure. The first experience I'd share is my incredible good fortune to begin my legal career clerking for three outstanding judges: as I mentioned, Judge Saylor, Judge Chagares, and Justice Ginsburg. And it was just such a tremendous honor to watch them do the work of judging every day, applying the law fairly and impartially to all of the parties that came before them.

I'd also say the past decade of working with the public servants in the Massachusetts attorney general's office has made a tremendous impression on me. I've learned a lot from them and from all of the litigants that we are fortunate to work with and would take

their commitment to public service with me if I were fortunate to serve my country in a new capacity as a judge.

Senator FEINSTEIN. Thank you.

Judge LIN. Thank you for the question, Senator. I've been shaped by many of my career experiences, but the career experience that probably has had one of the most profound impacts on me was my time as a Federal prosecutor. When I was a Federal prosecutor, I saw it as my job both to uphold the law but also to preserve the integrity of the criminal justice process.

When I was investigating cases, I took the investigation where the facts of the evidence led. When I was charging cases, I did so based on the facts and the law. And when I was prosecuting and trying cases in Federal court, I felt it was my obligation not only to advance the interests of the United States but to do so in a way that respected the rights of the defendant and also the statutory rights that Congress has given to crime victims.

Senator FEINSTEIN. Thank you.

Judge LIN. And that experience has served me well on the State court bench, and I hope that it will serve me well on the Federal bench, as well, if I am confirmed.

Senator FEINSTEIN. Thank you.

Judge REYES. Thank you, Senator Feinstein. I think my career path was shaped very early on. I come from a family of public servants. My mother was a New York City school teacher, and my father was a correction officer. I have two uncles who were detectives in the New York City Police Department. My grandfather worked in the sanitation department, as did my other uncle, and I have a family that served extensively in the armed forces. So, that, I think, really was what drove me.

And then when I clerked for Judge Trager, seeing what he did, watching the assistant U.S. attorneys, both on the criminal side and the civil side, just—I realized that that's what I wanted to do. So, that's what formed me, partly what got me here.

Senator FEINSTEIN. Thank you.

Judge SIMMONS. Thank you for the question, Senator Feinstein.

Senator FEINSTEIN. Lift your mic a little, so we can hear.

Judge SIMMONS. Thank you. Thank you for the question, Senator Feinstein. The most important experience for me was being raised by my mother. I was raised by a single mother. She was a cafeteria worker. She had a high school degree, a high school diploma. She did not have a college education, but she instilled core qualities in my sisters and I.

She instilled the qualities of hard work, of respecting others, of having strong ethics, and of knowing that you never give up on your dreams. Those are things that inspired me to succeed in my professional career. All of those factors have helped me on the superior court bench, and if I am so fortunate enough to be confirmed to the district court, they will help me serve in that position, as well.

Senator FEINSTEIN. Thank you.

Ms. SOLOMON. Thank you, Senator Feinstein. I would point to an early professional opportunity working at the Office of Justice Programs in the 1990s. We faced two very large challenges of violent crime rates being very, very high and hundreds of thousands of

people coming out of prison without a plan about how to address that safely. So, I got to work with senior leaders in the Department, with stakeholders, researchers, prosecutors, law enforcement—all to think about how we could be creative about solutions to those very challenging problems.

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

Senator PADILLA. Thank you all for your responses. As I recognize Senator Kennedy next for questions, let me also announce that I will be excusing myself to attend another committee and will be turning the Chairmanship over to Senator Hirono. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. I have been given 50 seconds to ask each of you questions and to hear your answers, which, of course, is patently absurd. So, I'd ask, if you would, just answer my question directly. This isn't a question. Judge Grey, I may vote for you anyway, but I'll commit right now in front of God and country to vote for you if you'll move back to Louisiana.

[Laughter.]

Judge Lin, I've read a number of your writings. I want to—you wrote an article in December 1998 entitled "Person of Faith: Race and Religion as Experiential Knowledge." You wrote it in a journal called Perspective. And this is what you said. I quote. Your words, not mine. "The problem with the Christian coalition is not that they are Bible thumpers (there are personal beliefs that often result from religious experiences) but that they are bigots," end quote. Did I quote that correctly?

Judge LIN. I believe you did.

Senator KENNEDY. Did you write that?

Judge LIN. I did write that, when I was 18 years old—or 20 years old, excuse me. I do want to be clear. I do not agree with that today. I wrote that before I went to law school, before I had any kind of professional——

Senator KENNEDY. You were a grown woman when you wrote this.

Judge LIN. I'm sorry?

Senator KENNEDY. You were a grown woman when you wrote this.

Judge LIN. I was 20 years old when I wrote it. It was before I had a professional career.

Senator KENNEDY. You were in your third year at Harvard?

Judge LIN. I was in——

Senator KENNEDY. A senior at Harvard?

Judge LIN. I was a junior at Harvard.

Senator KENNEDY. Junior. So, you were three-quarters of the way through your Harvard education, and you wrote that?

Judge LIN. That is correct, Senator. It is——

Senator KENNEDY. Wow.

Judge LIN [continuing]. Twenty years before I became a judge. I do——

Senator KENNEDY. Wow.

Judge LIN [continuing]. Not agree with it today. I do want to be clear about that.

Senator KENNEDY. Okay. Judge Simmons, let me just ask you a couple questions. You finished law school in 2004, I believe?

Judge SIMMONS. Yes, sir.

Senator KENNEDY. All right. Have you ever tried a case in Federal court?

Judge SIMMONS. I have not, Senator.

Senator KENNEDY. Have you ever filed a brief in Federal court?

Judge SIMMONS. I have not practiced in Federal court. My entire practice has been in the State court.

Senator KENNEDY. Okay. Have you ever argued a motion in Federal court?

Judge SIMMONS. My entire practice of over 12 years as a prosecutor has been in State court, Senator.

Senator KENNEDY. Okay. Have you ever—you serve as a State court judge. Have you ever presided over a jury trial, as a State court judge?

Judge SIMMONS. In the 5 years that I've been on the superior court bench, I have been in a moving department, and now I'm the supervising judge. I've——

Senator KENNEDY. Have you ever tried a jury trial?

Judge SIMMONS. As an attorney, I have tried——

Senator KENNEDY. No, as a judge.

Judge SIMMONS. As a judge, I have presided over court trials, not jury trials, sir.

Senator KENNEDY. No. So, the answer's no?

Judge SIMMONS. I have not presided over a jury trial as a judge.

Senator KENNEDY. Okay. In the 5 years you've been on the State bench, have you ever written any opinions, issued any opinions?

Judge SIMMONS. Well, sir, I've been in moving departments in the 5 years that I've been a superior court judge. We don't issue written opinions in moving departments on the superior court.

Senator KENNEDY. So, the answer's no?

Judge SIMMONS. In the 5 years I've been on the superior court, I've been in moving departments. We don't issue written opinions in moving departments.

Senator KENNEDY. Okay. What is the standard of review in Federal court for questions of fact?

Judge SIMMONS. For questions of fact by the trial court, it is clear error, sir.

Senator KENNEDY. Okay. What's the standard of review for questions of law?

Judge SIMMONS. In the trial court level, it's de novo.

Senator KENNEDY. Okay. What's the holding in *Mapp v. Ohio*?

Judge SIMMONS. In *Mapp v. Ohio*, as a—well, since I've been practicing as a district attorney for the last 12 years, as well as a superior court judge over the last 5 years, I know what the holding is. It escapes me as I currently sit here, but——

Senator KENNEDY. Okay.

Judge SIMMONS [continuing]. As a superior——

Senator KENNEDY. What's the Chevron doctrine? You'll see that a lot.

Judge SIMMONS. Yes. Chevron deference refers to an administrative agency that's interpreting its own rule. It created a two-part step test. The first step in that test is whether Congress was clear——

Senator KENNEDY. Okay. You know it. I got you. What's the political question doctrine?

Judge SIMMONS. I have not—as a superior court judge over the last 5 years and as a deputy district attorney for 12 years, I have not practiced in a Federal court, so if I am so fortunate enough to be confirmed, I will obviously apply the applicable law.

Senator KENNEDY. Okay. I want to talk about the United States Constitution. Is it a doctrine of plenary powers or enumerated powers?

Judge SIMMONS. Enumerated powers, sir.

Senator KENNEDY. Okay. I yield back 1 second, Madam Chair.

Senator HIRONO [presiding]. Thank you, Senator Kennedy. Welcome to all of our nominees and your families. I ask the following two initial questions of all nominees who appear before any of my committees, to ensure the fitness of nominees for the offices that you are being nominated for. So, I will ask these two questions, and we'll start with—and responses with Judge Grey and go right down the line. 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 GREY. No, Senator Hirono.

Ms. KOBICK. No, Senator.

Judge LIN. No, Senator.

Judge REYES. No—excuse me. No, Senator.

Judge SIMMONS. No, Senator.

Ms. SOLOMON. No, Senator.

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

Judge GREY. No, Senator Hirono.

Ms. KOBICK. No, Senator.

Judge LIN. No, Senator.

Judge REYES. No, Senator.

Judge SIMMONS. No, Senator.

Ms. SOLOMON. No, Senator.

Senator HIRONO. So, I note that all of our judicial nominees this morning except for Ms. Kobick—you are all sitting judges. And we sit in this Committee—often, the nominees are asked questions about what your judicial philosophy is, and the questions usually are whether you're an originalist, a textualist, etc. So, I'll start with the sitting judges. How do you approach decision-making in your court? We'll just go down the line.

Judge GREY. Senator Hirono, as I observed Judge Keith and Judge Sands through my clerkships, I approach each case with an open mind, with fidelity to the Constitution and any applicable Supreme Court or Sixth Circuit precedent, and I follow where the facts and the law lead me, to reach a just and fair decision.

Senator HIRONO. Judge Lin.

Judge LIN. Thank you for the question, Senator. I follow a very similar approach to Judge Grey. I diligently review the factual record and the applicable binding precedents, and then I listen with an open mind to the evidence and arguments, and I issue a ruling based on the law and the facts.

Judge REYES. Senator Hirono, my answer would not be very different than my colleagues'. I keep an open mind. I adhere to the

rule of law and my oath as a judge to be impartial. I listen to the parties' arguments, consider the factual record, look at precedent, apply that precedent to the facts, and render a decision.

Senator HIRONO. Go ahead.

Judge SIMMONS. Thank you for the question——

Senator HIRONO. Mr. Simmons.

Judge SIMMONS [continuing]. Senator. In the 5 years that I've been a superior court judge, my approach to resolving cases or handling cases is first to follow the law. I keep an open mind. I am prepared. I make sure I read all of the briefings and I read applicable binding precedent. I apply that precedent and apply the law to the facts in the case.

Senator HIRONO. Ms. Kobick, how would you approach cases before you?

Ms. KOBICK. Thank you, Senator. I think my approach would be similar, but I'd add a few things. I view the role as a judge to resolve the case in front of her and only the case in front of her, so, I would be mindful of the constraints on judicial power and approach each case with an open mind and with humility. And I would likewise review the record very carefully, review the arguments that the parties have made in their submissions, carefully research and apply the relevant Supreme Court and First Circuit precedent, and strive to write decisions that are clear and comprehensible to all the parties.

Senator HIRONO. I really appreciate the responses you gave, because as far as I'm concerned, what I would expect from a judge is an ability to be fair and objective and not have any kind of axe to grind or any kind of a philosophical bent that would make it hard for them to be—for you to be objective and to listen to the facts of the case and apply the relevant law, knowing full well that there's some—the law is not entirely clear, sometimes, as to the applicability of it. And so therefore I expect that we can look at your decisions and say that you have been fair and objective. So, thank you very much.

I do have a few questions for the nominee who is Ms. Solomon. Hold on for a moment. The Office for which you are nominated—you do provide some grants for groups that are fighting trafficking, I believe. So, under the leadership, OJP has awarded funds to combat human trafficking and support victims.

And any trafficking and addressing of human trafficking is a long-term problem and very complicated, and I just want to mention that we have a crisis in Hawaii in that two-thirds of the sex trafficking victims are identified as Native Hawaiians, and one out of every three child sex trafficking victims are Native Hawaiians. And this is a very disproportionate kind of an impact in all Native communities, including Native Hawaiians, American Indians, and Alaska Natives—that the instances of sex trafficking and sexual abuse are much, much higher and prevalent in these communities. So, I'd like to hear more about the work that your office does in preventing sex trafficking.

Ms. SOLOMON. Thanks for the question. I know we're tight on time, so I would just acknowledge that it is a major issue. It's a global issue. And we know that vulnerable populations, in particular, are part of the human trafficking issue. We take it very se-

riously at the Office of Justice Programs. We do have resources. Ninety million, I believe, went to human trafficking groups to fight this issue this year, and I'd be happy to take the issue of what's going on in Hawaii back to the Office, if I'm so fortunate as to be confirmed.

Senator HIRONO. And since I am presiding, I'm going to give myself just a little bit of leeway, because, you know, this is a huge problem. This is a huge challenge. And the Department of Justice also has another program in which there are grants provided to combat trafficking for—in the Native communities, so a concern I have is that the resources are scarce, and yet we have these programmatically different offices within the DOJ that addresses the similar kinds of problems, and it seems to me that maybe there's a way that we can combine forces or do something that—make sure that we use the scarce resources in a more effective way. Thank you. We now move on to Senator Blackburn.

Senator BLACKBURN. Thank you, Madam Chairman, and congratulations to each of you. And I am so pleased that Senator Hirono mentioned the human trafficking and the shortage of funds and the need to focus on that. It is something that we all share.

Judge Reyes, let me come to you. I know that Senator Grassley asked you about the *Sternquist* decision, and—not sure you gave a complete answer there. So, what I'd like for you to do is—looking at your history and seeing that you have a record of releasing these dangerous criminals into communities, how are we going to be assured that you are going to follow sentencing laws?

Judge REYES. Thank you, Senator Blackburn. As I said to Senator Grassley, in the 850 cases that I've handled dealing with bail, I follow the same procedure. I listen to the arguments from the government; look at the evidence; consider the pretrial services report, which has a recommendation on whether to release or not; and I follow Congress's mandated standards in the Bail Reform Act.

Senator BLACKBURN. You have had a tendency of releasing violent criminals, and we all hear a lot from our communities about criminals that are released in the streets. Let me ask you this. A few years ago, you stated that, and I'm quoting you, "the continued criticism and assault on the judiciary is troubling." And I agree with you on that statement. So, I want to give you the opportunity to expand on that and ask you if you agree with me that the constant protesting outside of the Supreme Court Justices' homes is not only unlawful but is also deeply troubling.

Judge REYES. Senator Blackburn, I don't remember making that statement, so I can't comment——

Senator BLACKBURN. Do you stand by that, that this should be deeply troubling to us that people are protesting outside of Supreme Court Justices' homes? Okay.

Judge REYES. I am—I am keenly aware, Senator, of the dangers that judges face——

Senator BLACKBURN. Do you——

Judge REYES [continuing]. In our society.

Senator BLACKBURN [continuing]. Agree that the assassination attempt on Justice Kavanaugh is something that should be deeply

troubling and that this type of rhetoric is unacceptable against members of the judiciary?

Judge REYES. I would agree, Senator Blackburn, that any assassination attempt made on an American citizen is deeply troubling.

Senator BLACKBURN. But you're not sure where you stand on people protesting outside of the judges' homes. Let me move on.

Let's see. Ms. Kobick, let me come to you. I heard your response on the *Caetano v. Massachusetts* case and your assertion that you would follow Supreme Court precedent when it comes to Second Amendment rights. So, tell me what your understanding is of whether the Second Amendment applies only to militias.

Ms. KOBICK. Senator, the Supreme Court held in the *Heller* decision that the Second Amendment protects an individual right to keep and bear arms.

Senator BLACKBURN. Okay. So, you would stick with that?

Ms. KOBICK. Absolutely, Senator.

Senator BLACKBURN. Okay. And let me ask you this. Why is it constitutionally permissible for the right to keep and bear arms, which the Supreme Court has called a fundamental right——

Ms. KOBICK. Yes.

Senator BLACKBURN [continuing]. That right to bear arms—but that right is subject to the discretionary issuance of a license by a local official?

Ms. KOBICK. Thank you for the question, Senator. I know different jurisdictions have different statutes related to licensing. If a case were to come before me involving a Second Amendment challenge to a licensing statute, I would certainly apply the Supreme Court's precedent, including the methodology clarified by the Court in the *Bruen* decision.

Senator BLACKBURN. Okay. Thank you. Ms. Solomon, you recently stated that equity plays a role in the Biden administration's budgetary considerations. And in my view, we should be disbursing funds to law enforcement. And your equity comment was made in connection with disbursement of funds, and I think we should be disbursing these funds to communities where there is a financial need, because communities all across this country are struggling with how to handle gangs and violent crime, and it is so critical that we support local law enforcement.

In Tennessee, we have had some issues—and Senator Hagerty and I actually introduced the Restoring Law and Order Act to deal with this, to make certain that those funds get to the places where they are most needed. So, would you agree with me that this administration should focus on ensuring that communities have the resources they need to fight violent crime instead of looking at a political ideology, a woke ideology, that says it's got to be done on equity?

Ms. SOLOMON. Thank you for the question. I completely agree that too many communities are struggling with violent crime, and it is absolutely our mission to get those jurisdictions the resources they need. So many of our resources are going directly to law enforcement, including our JAG grants and others. We're also trying to help work on health and resiliency and wellness for law enforcement officers, recruitment, retention——

Senator BLACKBURN. Should it be focused on need?

Ms. SOLOMON. Absolutely, yes. The equity provision is, as we consider our fundable applications, that we also take into account ways to bolster communities and community organizations to be a complement to law enforcement, to make our communities strong and safe.

Senator BLACKBURN. Okay. Thank you.

Senator HIRONO. Senator Hawley.

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

Ms. Kobick, if I could just start with you, let me ask you a question about the First Amendment, if I could. Does the First Amendment apply to the medium of the internet, in your view?

Ms. KOBICK. My understanding is that it does, Senator.

Senator HAWLEY. Why would that be true, considering that the internet didn't exist in 1791?

Ms. KOBICK. Well, Senator, the Supreme Court has adopted a number of different tests for assessing the constitutionality of different provisions. The First Amendment protects speech, of course, and people speak on the internet. But I would adhere to the relevant test if any First Amendment case were to come before me.

Senator HAWLEY. Well, I ask you because the Supreme Court has said something much the same in the Second Amendment context, and in the Second Amendment context, you argued to the Supreme Court that, because a particular firearm did not exist at the time of that amendment's ratification—

[Audio malfunction occurs.]

Senator HAWLEY [continuing]. That it wasn't covered. The Supreme Court—covered by the right, that is. The Supreme Court rejected your opinion unanimously in a per curiam opinion.

That's the *Caetano* case. I've got it right here. You've been asked about it. You know, what's interesting to me about this case is, there's a lot of division on the U.S. Supreme Court about a lot of topics, including the Second Amendment, but they were unanimous, in this case. It's a very short order: two pages—not even, really; page and a half—in which they rejected your argument completely out of hand. And I just want to ask you, why did you make an argument that the Supreme Court said held no water at all, so much so that they felt the need to address it in a per curiam decision and to remand the case, saying that the arguments that you made were not to be countenanced at all? You didn't get a single vote.

So, tell me. Help me understand. Why did you make arguments that the Supreme Court said had previously been made and previously rejected by the same Court?

Ms. KOBICK. Thank you, Senator. I just would like to clarify at the outset that I did not handle the *Caetano* case when it was before the Supreme Judicial Court. The case was handled by the district attorney, rather than the attorney general's office, at that stage. In the Supreme Court, the argument that I made——

Senator HAWLEY. Wait a minute. The *Caetano* case at the U.S. Supreme Court—you didn't handle it?

Ms. KOBICK. I did co-author the brief in opposition to certiorari at the Supreme Court——

[Audio access resumes.]

Senator HAWLEY. Okay.

Ms. KOBICK [continuing]. But not the Supreme Judicial Court.

Senator HAWLEY. I'm asking you about the Supreme Court——

Ms. KOBICK. Sure.

Senator HAWLEY [continuing]. Judgment that rejected your argument. So, you just confirmed, I think, that you made those arguments to the U.S. Supreme Court. Is that correct?

Ms. KOBICK. Respectfully, Senator, the argument in that brief was slightly different. The argument was that a stun gun is—we argued on behalf of the Commonwealth—not an analog to a founding-era weapon.

Senator HAWLEY. Which the Supreme Court rejected unanimously.

Ms. KOBICK. The Supreme Court held that the Supreme Judicial Court had misstated the *Heller* decision in three respects, but again, I didn't handle the case in front of the Supreme Judicial Court.

Senator HAWLEY. So, your argument is that your position wasn't rejected unanimously by the U.S. Supreme Court?

Ms. KOBICK. I certainly acknowledge, Senator, that the Supreme Court summarily reversed the Supreme Judicial Court's decision, and I would adhere to the Supreme Court's holding in *Caetano* and reaffirmance of *Heller's* statements.

Senator HAWLEY. Here's what I'm trying to understand. The Supreme Court was very dismissive of your arguments. One of the reasons it was dismissive is it said they've considered these arguments before and rejected them, which is why they then rejected your arguments, per curiam, unanimously. So, I'm trying to understand why someone who has ethical obligations to the Court—why you would make arguments that the Court has previously rejected, knowing that they've previously rejected them.

And then here's the other thing that interests me. In this case, the person who had been arrested under this law that the Supreme Court then reversed on was the victim of domestic abuse. And I just want to read a few of the facts, here. This is from Justice Thomas and Justice Alito's concurrence in that per curiam judgment.

Here's what they say. "After a bad altercation"—that's from the trial record—"with an abusive boyfriend that put her in the hospital, Jaime Caetano found herself homeless and in fear of her life. So, she obtained multiple restraining orders against her abuser, but they proved futile. So, when a friend offered her a stun gun for self-defense against her former boyfriend, she accepted the weapon, and it's a good thing she did, because one night after leaving work, Caetano found her ex-boyfriend waiting for her outside."

"He started screaming that she was"—this is from the trial record—"not going to F'ing work at this place anymore because she should be home with the kids they had had together. Caetano's abuser towered over her by nearly a foot and outweighed her by close to 100 pounds. She stood her ground, displayed the stun gun, and announced, 'I'm not going to take this anymore. I don't want to have to use this stun gun on you, but if you don't leave me alone, I'm going to have to.' And the gambit worked. The ex-boy-

friend got scared, and he left her alone." You think she shouldn't have had the right to self-defense?

Ms. KOBICK. Senator, thank you. Again, the district attorney made the decision to bring charges in the *Caetano* case. The attorney general's office and myself were not involved in that decision, but I certainly recognize——

Senator HAWLEY. But you argued for it to be upheld before the U.S. Supreme Court.

Ms. KOBICK. Senator, the argument in that brief was that the Supreme Court should deny review of the case.

Senator HAWLEY. Right.

Ms. KOBICK. But I take——

Senator HAWLEY. Which denied the right of self-defense to this person. I'm asking you why.

Ms. KOBICK. Senator, my duty as assistant attorney general was to represent the Commonwealth in that case when it came to the Supreme Court, and I did so consistent with my ethical obligations.

Senator HAWLEY. Your duty is not to make frivolous arguments to the Supreme Court of the United States, and frankly, I question your judgment in what you did in this case, and I question your judgment in choosing to try and perpetuate what is manifestly an injustice to this victim of domestic abuse. I yield the rest of my time.

Senator HIRONO. I almost feel compelled to say something about the bringing of frivolous lawsuits, i.e., all of the lawsuits based on election fraud, most of which were not upheld, but we won't go there. Before I adjourn today's hearing, I would like to make a quick logistical note. Questions for the record will be due to the nominees by 5 p.m. on Wednesday, December 7th, and the record will likewise remain open until that time to submit letters and similar materials.

And with that, this hearing is adjourned. Thank you very much.

[Whereupon, at 12:06 p.m., the hearing was adjourned.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jonathan James Canada Grey

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.

   United States District Court
   Theodore Levin United States Courthouse
   231 West Lafayette Boulevard, Room 635
   Detroit, Michigan 48226

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

   1982; Poplarville, Mississippi

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.

   2004 – 2007, Georgetown University Law Center; J.D., 2007

   2000 – 2004, Morehouse College; B.S. (*cum laude*), 2004

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.

   2021 – present
   United States District Court
   Eastern District of Michigan
   Theodore Levin United States Courthouse

231 West Lafayette Boulevard, Room 635
Detroit, Michigan 48226
United States Magistrate Judge

2016 – 2021
United States Attorney's Office
Southern District of Ohio
303 Marconi Boulevard, Suite 200
Columbus, Ohio 43215
Assistant United States Attorney

2012 – 2016
United States Attorney's Office
Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Assistant United States Attorney

2011 – 2012; 2007 – 2009; Summer 2006
Seyfarth Shaw LLP
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606
Associate (2011 – 2012; 2007 – 2009)
Summer Associate

2010 – 2011
United States Court of Appeals for the Sixth Circuit
Theodore Levin United States Courthouse
231 West Lafayette Boulevard, Room 240
Detroit, Michigan 48226
Law Clerk to the Honorable Damon J. Keith (deceased)

2009 – 2010
United States District Court for the Middle District of Georgia
C.B. King United States Courthouse
201 West Broad Street
Albany, Georgia 31701
Law Clerk to the Honorable W. Louis Sands

2004 – 2007
Barbri, Incorporated
12222 Merit Drive, Suite 1340
Dallas, Texas 75251
Campus Representative (Georgetown Law)

2005 – 2006

Jones Walker LLP
445 North Boulevard, Suite 800
Baton Rouge, Louisiana 70802
Winter Clerk (2005 – 2006)
Summer Clerk (2005)

2004 – 2006
Georgetown University Law Center
600 New Jersey Avenue, Northwest
Washington, DC 20001
Audio Visual Department Work-Study Student Employee

Summer 2005
Circuit Court of Cook County
Richard J. Daley Center
50 West Washington Street, Room 1906
Chicago, Illinois 60602
Judicial Intern for the Honorable Nancy J. Katz (Retired)

Summer 2004
West Teleservices, Incorporated (defunct)
7850 Anselmo Lane
Baton Rouge, Louisiana 70810
Inbound Call Center Representative

Teaching Affiliation
Summer 2019, Summer 2018
The Ohio State University Moritz College of Law
American Language and Law Program for Prospective LL.M. Students
55 West 12th Avenue
Columbus, Ohio 43210
Criminal Law Instructor to Foreign Attorneys

Other Affiliations (uncompensated)

2022 – present
Urban League of Detroit and Southeast Michigan
208 Mack Avenue
Detroit, Michigan 48201
Executive Board Member

2020 – 2021
Legal Aid Society of Columbus
1108 City Park Avenue, Suite 100
Columbus, Ohio 43206
Board Member

2008 – 2009
Inner City Teaching Corps
150 North Michigan Avenue, Suite 2100
Chicago, Illinois 60601
Associate Board Member

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

   I did not serve in the military. I registered with 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.

   40 Under 40 Honoree, Michigan Chronicle (2022)

   United States Attorney's Office Awards for Outstanding Performance
   Cash Awards (2020, two Awards in 2019, 2018, 2017)
   Time Off Awards (two Awards in 2020, 2019, 2017, 2015)

   Franklin County Children Services Simba Mentoring Program, Mentor of the Year (2019)

   Georgetown University Law Center, Keller Family Foundation Scholarship (2004 – 2007)

   International Chamber of Commerce, Mediation Competition Quarterfinalist, Paris, France (2007)

   Morehouse College
   Cum Laude (2004)
   Phi Beta Kappa
   C.M. and Y.E. Yang Award for Achievement in Chemistry Department (2004)
   Dean's List (2000 – 2004)
   Ronald E. McNair National Aeronautics and Space Administration Scholar (2000 – 2004)

   National Achievement Scholarship Program, Texaco Foundation Scholarship (2000 – 2004)

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 (approximately 2007 – 2008)

Black Law Students Association, Georgetown University Law Center (2004 – 2007)
Historian (2004 – 2005)
Parliamentarian (2005 – 2006)

Cabrini Green Legal Aid Clinic (approximately 2007 – 2009)

Chicago Committee – Advancing Minority Attorneys (approximately 2007 – 2011)

Chicago Bar Association (approximately 2007 – 2012)

Cook County Bar Association (approximately 2007 – 2012)
Cook County Bar Association Foundation Board Member (2008 – 2009)

Federal Bar Association (2012 – present)
National Law Clerk Committee Member (2020 – present)
Columbus Chapter Executive Board Member (2020 – 2021)
Columbus Chapter Membership Chair (2020 – 2021)
Eastern District of Michigan Chapter Diversity Committee Member (2013 – 2016; 2022 – present)

Federal Magistrate Judges Association (2021 – present)

Illinois State Bar Association (2007 – present)

John Mercer Langston Bar Association (2016 – 2021)

Just The Beginning, Incorporated (2010 – present)

National Bar Association (2007 – 2009; 2016 – 2017)

The Ohio State University Moritz College of Law 1L Mentoring Program (2019 – 2021)

Wolverine Bar Association (2012 – 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.

Michigan, 2022
Illinois, 2007

There have been no lapses in membership.

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

United States Supreme Court, 2012
United States Court of Appeals for the Sixth Circuit, 2011
United States District Court for the Middle District of Georgia, 2009
United States District Court for the Northern District of Illinois, 2008
United States District Court for the Eastern District of Michigan, 2012
United States District Court for the Southern District of Ohio, 2016

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.

Alternatives for Girls (2010 – 2011)
Mentor (2010 – 2011)

Companies that Care, Mentor (2007 – 2010)

Explorer Scouts, United States Attorney's Office for the Eastern District of Michigan Post, Volunteer (2012 – 2014)

Franklin County Children Services Simba Mentoring Program (2018 – 2022)

Frederick Douglass High School, Mentor (2014 – 2015)

Georgetown University Law Center Admissions Interviewer (2011 – present)

McKinley Senior High School (2010 – present)
Alumni Association, Life Member
Class of 2000 Reunion Planning Committee (2010 – present)

Minority Legal Education Resources, now known as MLER, Incorporated (2007 – 2012)
Illinois Bar Exam Tutor (2008 – 2009, 2012)

Morehouse College Alumni Association (2010 – present)
Columbus, Ohio Chapter Member (2016 – 2021)
Detroit, Michigan Chapter Member (2010 – present)
Recording Secretary and Elections Coordinator (2013 – 2016)

Urban League of Detroit and Southeast Michigan (2022 – present)
Executive Board Member (2022 – 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 that I have been a member of currently discriminate on the basis of race, sex, religion, or national origin. It is my understanding that Georgetown University Law Center formerly discriminated on the basis of race, sex, and religion, including the exclusion of minorities and the imposition of quotas broadly limiting admission of individuals in particular groups.

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 Sang-yul Lee and Steven J. Pearlman, *The Illinois Whistleblower Act's Impact on Common Law Claims*, 97 ILL. B. J. 90 (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.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

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

October 13, 2022: Presiding Judge, Naturalization Ceremony, United States District Court for the Eastern District of Michigan, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The Court's address is 231 West Lafayette Boulevard, Detroit, Michigan 48226.

October 3, 2022: Presiding Judge, Naturalization Ceremony, United States District Court for the Eastern District of Michigan, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The Court's address is 231 West Lafayette Boulevard, Detroit, Michigan 48226.

September 8, 2022: Presiding Judge, Naturalization Ceremony, United States District Court for the Eastern District of Michigan, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The Court's address is 231 West Lafayette Boulevard, Detroit, Michigan 48226.

August 25, 2022: Presiding Judge, Naturalization Ceremony, United States District Court for the Eastern District of Michigan, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The Court's address is 231 West Lafayette Boulevard, Detroit, Michigan 48226.

June 30, 2022: Presiding Judge, Naturalization Ceremony, United States District Court for the Eastern District of Michigan, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording.

The Court's address is 231 West Lafayette Boulevard, Detroit, Michigan 48226.

June 14, 2022: Panelist, Magistrate Judge Duties Discussion with Court Summer Interns, United States District Court for the Eastern District of Michigan, Detroit, Michigan. I discussed my education, background, the magistrate judge selection process, and my duties as a magistrate judge. I have no notes, transcript, or recording. The Court's address is 231 West Lafayette Boulevard, Detroit, Michigan 48226.

June 9, 2022: Presiding Judge, Two Naturalization Ceremonies, United States District Court for the Eastern District of Michigan, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The Court's address is 231 West Lafayette Boulevard, Detroit, Michigan 48226.

June 1, 2022: Panelist, "Imposter Syndrome Virtual Panel Discussion," Just The Beginning, Incorporated and the Federal Bar Association Eastern District of Michigan Chapter, virtual event. Video available at https://vimeo.com/733049581.

May 26, 2022: Presiding Judge, Naturalization Ceremony, United States District Court for the Eastern District of Michigan, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The Court's address is 231 West Lafayette Boulevard, Detroit, Michigan 48226.

May 23, 2022: Presiding Judge, Naturalization Ceremony, United States District Court for the Eastern District of Michigan, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The Court's address is 231 West Lafayette Boulevard, Detroit, Michigan 48226.

May 12, 2022: Presiding Judge, Naturalization Ceremony, United States Citizenship and Immigration Service, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The address for the United States Citizenship and Immigration Service is 11411 East Jefferson Avenue, Detroit, Michigan 48214.

April 21, 2022: Presiding Judge, Naturalization Ceremony, United States Citizenship and Immigration Service, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The address for the United States Citizenship and Immigration Service is 11411 East Jefferson Avenue, Detroit, Michigan 48214.

March 30, 2022: Speaker, Judicial Clerkship course, University of Detroit Mercy School of Law, Detroit, Michigan. I discussed the work involved in a judicial clerkship, how to be a successful law clerk, and my background. I have no notes, transcript, or recording. The address for the University of Detroit Mercy School of

Law is 651 East Jefferson Avenue, Detroit, Michigan 48226.

March 25, 2022: Panelist, Criminal Procedure course, University of Michigan Law School, Ann Arbor, Michigan. I discussed the duties of a federal magistrate judge, including presiding over detention hearings and search warrant requests, my legal background, and my past practice as a federal prosecutor. I have no notes, transcript, or recording. The address for the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

March 21, 2022: Presiding Judge, Naturalization Ceremony, United States Citizenship and Immigration Service, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The address for the United States Citizenship and Immigration Service is 11411 East Jefferson Avenue, Detroit, Michigan 48214.

February 24, 2022: Presiding Judge, Naturalization Ceremony, United States Citizenship and Immigration Service, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The address for the United States Citizenship and Immigration Service is 11411 East Jefferson Avenue, Detroit, Michigan 48214.

February 15, 2022: Speaker, Damon J. Keith 34th Annual (Virtual) Soul Food Luncheon, Damon J. Keith Center for Civil Rights at Wayne State University Law School, Detroit, Michigan. I discussed my background and Judge Keith's legacy, his repeated promotion of open access to the courts, and his perspective on community engagement. I have no notes, transcript, or recording. Press coverage supplied. The address for the Damon J. Keith Center for Civil Rights at Wayne State University Law School is 471 West Palmer Street, Detroit, Michigan 48202.

January 13, 2022: Presiding Judge, Naturalization Ceremony, United States Citizenship and Immigration Service, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The address for the United States Citizenship and Immigration Service is 11411 East Jefferson Avenue, Detroit, Michigan 48214.

December 20, 2021: Presiding Judge, Naturalization Ceremony, United States Citizenship and Immigration Service, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The address for the United States Citizenship and Immigration Service is 11411 East Jefferson Avenue, Detroit, Michigan 48214.

November 29, 2021: Presiding Judge, Naturalization Ceremony, United States Citizenship and Immigration Service, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The address for the United States Citizenship and Immigration Service is 11411 East

Jefferson Avenue, Detroit, Michigan 48214.

November 8, 2021: Presiding Judge, Naturalization Ceremony, United States Citizenship and Immigration Service, Detroit, Michigan. I swore in new citizens to the United States of America. I have no notes, transcript, or recording. The address for the United States Citizenship and Immigration Service is 11411 East Jefferson Avenue, Detroit, Michigan 48214.

November 1, 2021: Speaker, *History of Injustice* course, Ohio University, virtual event. I answered students' questions about constitutional rights, policing, federal criminal law, and judicial duties. I have no notes, transcript, or recording. The address for Ohio University is 1 Ohio University, Athens, Ohio 45701.

June 2021 (specific date unknown): Panelist, Law Day, Federal Bar Association Eastern District of Michigan Chapter, Detroit, Michigan, virtual event. I discussed the process of becoming a federal magistrate judge and what magistrate judges do. I have no notes, transcript, or recording. The address for the Federal Bar Association Eastern District of Michigan Chapter is P.O. Box 5249, Northville, Michigan 48167.

April 17, 2021: Moot Court Guest Judge, Appellate Advocacy course, Seton Hall University Law School, New Jersey, virtual event. I judged a moot court class and provided feedback to law school students on effective appellate advocacy. I have no notes, transcript, or recording. The address for Seton Hall University Law School is One Newark Center, 1109 Raymond Boulevard, Newark, New Jersey 07102.

April 8, 2021: Speaker, Intersections of Race, Justice, and Sport-Celebrity Culture in the O.J. Simpson Murder Trial course, Otterbein University, Westerville, Ohio, virtual event. I provided insight into personal observations at the time of the Simpson murder trial and discussed the workings of trials. I have no notes, transcript, or recording. The address for Otterbein University is 1 South Grove Street, Westerville, Ohio 43081.

January 28, 2021: Speaker, P.U.R.P.O.S.E. (People Using Raw Potential, Optimizing Student Excellence) After-School Program, Thomas Worthington High School, Worthington, Ohio. I discussed how to become an attorney, what it meant to be a federal prosecutor, and the importance of setting goals and analyzing consequences prior to making decisions. I have no notes, transcript, or recording. The address for Thomas Worthington High School is 300 West Granville Road, Worthington, Ohio 43085.

November 2, 2020: Speaker, *History of Injustice* course, Ohio University, virtual event. I answered students' questions about constitutional rights, policing, and federal criminal law. I have no notes, transcript, or recording. The address for Ohio University is 1 Ohio University, Athens, Ohio 45701.

October 23, 2020: Panelist, Race, Justice, and the Legal System Seminar, Ohio Women's Bar Association, virtual event. I answered moderators' questions about the legal system. I have no notes, transcript, or recording. The address for the Ohio Women's Bar Association is 7946 Clyo Road, Suite A, Centerville, Ohio 45459.

December 5, 2019: Speaker, P.U.R.P.O.S.E. (People Using Raw Potential, Optimizing Student Excellence) After-School Program, Thomas Worthington High School, Worthington, Ohio. I discussed how to become an attorney, what it meant to be a federal prosecutor, and the importance of setting goals and analyzing consequences prior to making decisions. I have no notes, transcript, or recording. The address for Thomas Worthington High School is 300 West Granville Road, Worthington, Ohio 43085.

November 16, 2019: Speaker, Domestic Violence Community Seminar, Center for Individual and Family Counseling, Incorporated, Southfield, Michigan. I discussed strategies for maintaining healthy relationships and supportive services for individuals in abusive relationships and signs of a healthy relationship. I have no notes, transcript, or recording. The address for the Center for Individual and Family Counseling is 30555 Southfield Road, Southfield, Michigan 48076.

October 30, 2019: Speaker, *History of Injustice* course, Ohio University, Athens, Ohio. I answered students' questions about constitutional rights, policing, and federal criminal law. I have no notes, transcript, or recording. The address for Ohio University is 1 Ohio University, Athens, Ohio 45701.

Summer 2019 (exact date unknown): Instructor, *Criminal Law* course, American Language and Law Program, The Ohio State University Moritz College of Law, Columbus, Ohio. My one-day course focused on unique aspects of American criminal law, particularly application of criminal statutes, jury trials, and sentencing. The students were foreign attorneys and potential Masters of Laws (LL.M.) recipients. I have no notes, transcript, or recording. The address for The Ohio State University Moritz College of Law is 55 West 12th Avenue, Drinko Hall Columbus, Ohio 43210.

November 28, 2018: Speaker, P.U.R.P.O.S.E. (People Using Raw Potential, Optimizing Student Excellence) After-School Program, Thomas Worthington High School, Worthington, Ohio. I discussed how to become an attorney, what it meant to be a federal prosecutor, and the importance of setting goals and analyzing consequences prior to making decisions. I have no notes, transcript, or recording. The address for Thomas Worthington High School is 300 West Granville Road, Worthington, Ohio 43085.

November 14, 2018: Speaker, *History of Injustice* course, Ohio University, Athens, Ohio. I appeared alongside a defense attorney and answered students'

questions about constitutional rights, policing, and federal criminal law. I have no notes, transcript, or recording. Press coverage supplied. The address for Ohio University is 1 Ohio University, Athens, Ohio 45701.

Summer 2018 (exact date unknown): Instructor, *Criminal Law* course, American Language and Law Program, The Ohio State University Moritz College of Law, Columbus, Ohio. My one-day course focused on unique aspects of American criminal law, particularly application of criminal statutes, jury trials, and sentencing. The students were foreign attorneys and potential Masters of Laws (LL.M.) recipients. I have no notes, transcript, or recording. The address for The Ohio State University Moritz College of Law is 55 West 12th Avenue, Drinko Hall Columbus, Ohio 43210.

May 2018 (specific date unknown): Speaker, P.U.R.P.O.S.E. (People Using Raw Potential, Optimizing Student Excellence) After-School Program, Thomas Worthington High School, Worthington, Ohio. I discussed academic achievement, the process of applying to college, securing funding to attend college, making sound choices, and the law. I have no notes, transcript, or recording. The address for Thomas Worthington High School is 300 West Granville Road, Worthington, Ohio 43085.

April 3, 2018: Speaker, *Black Men and Masculinities* course, Ohio University, Athens, Ohio. I answered students' questions about identity, masculinity, black men in society, and professional development. I have no notes, transcript, or recording. The address for Ohio University is 1 Ohio University, Athens, Ohio 45701.

April 3, 2018: Speaker, *History of Injustice* course, Ohio University, Athens, Ohio. I appeared alongside a defense attorney and answered students' questions about constitutional rights, policing, and federal criminal law. I have no notes, transcript, or recording, but press coverage is supplied. The address for Ohio University is 1 Ohio University, Athens, Ohio 45701.

February 23, 2018: Keynote Speaker, Black Essence Ball, Ohio University Black Student Union, Athens, Ohio. I discussed utilizing Black History to fuel success and achievement and highlighted historical figures including Robert Smalls and John Mercer Langston, and current Ohio University students. I have no notes, transcript, or recording. The address for Ohio University is Athens, Ohio 45701.

November 8, 2017: Speaker, *History of Injustice* course, Ohio University, Athens, Ohio. I appeared alongside a defense attorney and answered students' questions about constitutional rights, policing, and federal criminal law. I have no notes, transcript, or recording. The address for Ohio University is 1 Ohio University, Athens, Ohio 45701.

October 27, 2017: Panelist, "Walk With Me: The Trials of Judge Damon J.

Keith," Wayne State University Law School, Detroit, Michigan. Alongside two other law clerks of Judge Damon J. Keith, I discussed a film about Judge Keith's life and work at a celebration of Judge Keith's fifty years of service as a federal judge. I have no notes, transcript, or recording. The address for Wayne State University Law School is 471 West Palmer Street, Detroit, Michigan 48202.

June 23, 2017: Workshop Leader, Reclaiming Identity Workshop, Connecting Kids Inside Out Take 'Em Fishing Program, United States Department of Agriculture Natural Resources Conservation Service, Gloucester, Ohio. I led a workshop on self-esteem, community engagement, and healthy transitions to adulthood. I have no notes, transcript, or recording. The address for the United States Department of Agriculture Natural Resources Conservation Service State Office is 200 North High Street, Room 522, Columbus, Ohio 43215.

October 19, 2016: Speaker, *History of Injustice* course, Ohio University, Athens, Ohio. I appeared alongside a defense attorney and answered students' questions about constitutional rights, policing, and federal criminal law. I have no notes, transcript, or recording. The address for Ohio University is 1 Ohio University, Athens, Ohio 45701.

2012 – 2016 (specific dates unknown): Speaker, Project Sentry programs, United States Attorney's Office for the Eastern District of Michigan. Alongside a Michigan State Trooper and a Detroit Police Department Officer, I participated in United States Department of Justice anti-violence presentations at public elementary, middle, and high schools in Detroit, Michigan. I engaged in dozens of conversations with hundreds of students, which included topics of diversity, engaging with law enforcement officers, navigating household challenges, resolving conflict, and explaining pathways to college and law school. I have no notes, transcript, or recording. The address for the United States Attorney's Office for the Eastern District of Michigan is 211 West Fort Street, Suite 2001, Detroit, Michigan 48226.

November 14, 2015: Panelist, Law School Exam Preparation Workshop, Wolverine Bar Association, Detroit, Michigan. I discussed tips for successfully taking law school exams, including time management, how to identify legal issues, how to conduct legal analysis, and exam writing format for law school students. I have no notes, transcript, or recording. The address for the Wolverine Bar Association is 535 Griswold Street, Suite 111-531, Detroit, Michigan 48226.

January 24, 2015: Speaker, "The Interview Before the Interview" and "Meeting the Eyeball Test," Wolverine Bar Association, Detroit, Michigan. I provided detailed instruction for law students on how to physically prepare for interviews with law firms and companies regarding business attire, etiquette, and application materials (cover letter, resume, writing sample), and I also provided interview tips and participated in mock interviews with students. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Wolverine Bar

Association is 535 Griswold Street, Suite 111-531, Detroit, Michigan 48226.

February 22, 2014: Keynote Speaker, Black History Month Program, Metropolitan Elks Lodge 962, Highland Park, Michigan. Handout supplied.

January 25, 2014: Speaker, "The Interview Before the Interview" and "Meeting the Eyeball Test," Wolverine Bar Association, Detroit, Michigan. I was one of two speakers who provided detailed instruction for law students on how to physically prepare for interviews with law firms and companies regarding business attire, etiquette, and application materials (cover letter, resume, writing sample), and I also provided interview tips and participated in mock interviews with students. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Wolverine Bar Association is 535 Griswold Street, Suite 111-531, Detroit, Michigan 48226.

January 18, 2014: Speaker, Dr. Martin Luther King Jr. Service Program, Morehouse College Alumni Association Detroit Chapter, Detroit, Michigan. To the best of my recollection, I discussed the importance of community service as a method to honor Dr. King's legacy. I have no notes, transcript, or recording. The address for the Morehouse College Alumni Association Detroit Chapter is 18701 Grand River Avenue, Suite 237, Detroit, Michigan 48223.

November 7, 2013: Panelist, Federal Bar Association/University of Detroit Mercy School of Law, Detroit, Michigan. I spoke to law students about navigating law school exams and the bar exam and provided specific tips for success. I have no notes, transcript, or recording. The address for the Federal Bar Association Eastern District of Michigan Chapter is P.O. Box 5249, Northville, Michigan 48167.

July 13, 2013: Speaker, New Student Orientation Program, Detroit Chapters of Morehouse College Alumni Association and Spelman College Alumnae Association, Detroit, Michigan. I spoke to incoming freshmen about the history of Morehouse College, transitioning from high school to college, forming successful study habits, balancing social activities and academics, healthy relationship practices, and overcoming financial and household challenges. I have no notes, transcript or recording. The address for the Morehouse College Alumni Association Detroit Chapter is 18701 Grand River Avenue, Suite 237, Detroit, Michigan 48223. The address for the National Alumnae Association of Spelman College Detroit Chapter is 25147 Stonycroft Drive, Southfield, Michigan 48033.

April 12, 2013: Speaker, Osborn High School, Detroit, Michigan. I discussed my background, path to the law, and practice as a federal prosecutor with Mr. Richard Diggs' class, and answered students' questions about college and the law. I have no notes, transcript, or recording. The address for Osborn High School is 11600 East Seven Mile Road, Detroit, Michigan 48205.

March 13, 2013: Panelist, Federal Practitioners Panel, "Behind the Scenes" Day at the Federal Courthouse, Federal Bar Association Eastern District of Michigan, Detroit, Michigan. I discussed civil and criminal practice of Assistant United States Attorneys. I have no notes, transcript, or recording. The address for the Court is 231 West Lafayette Boulevard, Detroit, Michigan 48226. The address for the Federal Bar Association Eastern District of Michigan Chapter is P.O. Box 5249, Northville, Michigan 48167.

January 26, 2013: Speaker, "The Interview Before the Interview," Wolverine Bar Association, Detroit, Michigan. I was one of two speakers who provided detailed instruction for law students on preparing application materials for summer employment (cover letter, resume, and writing samples). I also participated in mock interviews with students. I have no notes, transcript, or recording. The address for the Wolverine Bar Association is 535 Griswold Street, Suite 111-531, Detroit, Michigan 48226.

January 12, 2013: Speaker, Dr. Martin Luther King Jr. Service Program, Morehouse College Alumni Association Detroit Chapter, Hartford Memorial Baptist Church, Detroit, Michigan. I discussed the posthumous honoree for the event, Morehouse alumnus Arthur Johnson, Ph.D., and his life and work, and introduced speakers Steve Palackdharry, Chacona Johnson, and Judge Damon J. Keith. I have no notes, transcript, or recording. The address for the Morehouse College Alumni Association Detroit Chapter is 18701 Grand River Avenue, Suite 237, Detroit, Michigan 48223.

July 2012 (specific date unknown): Mock Trial Witness and Coach, Just the Beginning, Incorporated Summer Legal Institute, Chicago, Illinois. I served as a coach for high school students learning the elements of a criminal trial. I also served as a witness during the mock trial. I have no notes, transcript, or recording. The address for Just the Beginning, Incorporated is 70 West Madison Street, Suite 2900, Chicago, Illinois 60602.

February 23, 2012: Speaker, Black History Month Program, Seyfarth Shaw LLP, Chicago, Illinois. I introduced the keynote speaker and the firm's community award recipient. I have no notes, transcript, or recording. The address for Seyfarth Shaw LLP is 233 South Wacker Drive, Suite 8000, Chicago, Illinois 60606.

From 2007 to 2009 and 2011 to 2012, I spoke to public high school students on multiple occasions at different schools in Chicago and its suburbs about employment discrimination laws, attending college, and setting and achieving goals. I sometimes spoke in coordination with Seyfarth Shaw LLP and one of its major clients, Allstate Corporation. At other occasions I spoke in my own capacity. I have no record of the specific dates of those events, and I do not have any notes, transcript, or recording. The address for Seyfarth Shaw LLP is 233 South Wacker Drive, Suite 8000, Chicago, Illinois 60606. The address for Allstate Corporation is 400 Lake Cook Road, Deerfield, Illinois 60015.

November 21, 2008: Speaker, Waukegan High School, Waukegan, Illinois. I discussed how employment discrimination laws protect individuals in a presentation to high school students in conjunction with Seyfarth Shaw LLP and Allstate Corporation. I have no notes, transcript, or recording. The address for Waukegan High School is 2325 Brookside Avenue, Waukegan, Illinois 60085.

October 1, 2008: Co-Presenter, "The Most Common Mistakes Your Supervisors Make—and How You Can Get Them to Stop," Business & Learning Resources 2008 Illinois Employment Law Conference, Chicago, Illinois. Alongside two other attorneys from Seyfarth Shaw LLP, I identified common mistakes supervisors make and provided strategies to stop supervisors from making those mistakes. I have no notes, transcript, or recording. The address for Business & Learning Resources is 5511 Virginia Way, Suite 150, Brentwood, Tennessee 37027.

February 2008 (specific date unknown): Speaker, NewRoot Learning Institute (formerly known as Umoja Corporation) Community Connections Event, Manley Career Academy High School, Chicago, Illinois. I spoke to high school freshmen about educational and professional achievement and led them in a community-relevant literacy interaction. I have no notes, transcript, or recording. The address for NewRoot Learning Institute is 910 West Van Buren Street, Suite 710, Chicago, Illinois 60607.

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.

Daytime Columbus Show: Don't Let Excuses Stop You From Being a Mentor, NBC4 WCMH-TV (June 26, 2019). Video available at https://www.nbc4i.com/daytime-columbus/dont-let-excuses-stop-you-from-being-a-mentor.

Administrative Office of the United States Courts, *Civil Rights Champion Uses Law to Fight Racism* (Feb. 1, 2018). Video available at https://www.youtube.com/watch?v=6moBGLiLp_M.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Since 2021, I have served as a United States Magistrate Judge for the Eastern District of Michigan. I was appointed to that position by the district judges of the United States District Court for the Eastern District of Michigan. The jurisdiction of United States Magistrate Judges is defined by 28 U.S.C. § 636.

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

I have not presided over any trials.

i. Of these cases, approximately what percent were:

jury trials:	0%
bench trials:	0% [total 100%]

ii. Of these cases, approximately what percent were:

civil proceedings:	0%
criminal proceedings:	0% [total 100%]

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

Hale v. United States, No. 4:22-CV-10300, 2022 WL 4482080 (E.D. Mich. Sept. 27, 2022), *R & R adopted* (E.D. Mich. Oct. 13, 2022)

Abcumby v. Michigan Dep't of Corr., No. 2:21-CV-11281, 2022 WL 4459889 (E.D. Mich. Sept. 7, 2022), *R & R adopted*, 2022 WL 4456239 (E.D. Mich. Sept. 23, 2022)

Sedore v. Wyckoff, No. 2:21-CV-12935, 2022 WL 4594034 (E.D. Mich. Sept. 2, 2022), *R & R adopted*, 2022 WL 4591642 (E.D. Mich. Sept. 29, 2022)

United States v. Lewis, No. 2:17-MC-50514, 2022 U.S. Dist. LEXIS 165965 (E.D. Mich. Aug. 26, 2022), *R & R adopted*, 2022 U.S. Dist. LEXIS 165932 (E.D. Mich. Sept. 14, 2022)

Cladera v. Comm'r of Soc. Sec., No. 2:21-CV-11684, 2022 WL 6581089 (E.D. Mich. Aug. 9, 2022), *R & R adopted in part and rejected in part*, 2022 WL 4553064 (E.D. Mich. Sept. 29, 2022)

Chamblis v. Kijakazi, No. 1:20-CV-12984, 2022 WL 3655326 (E.D. Mich. Aug. 8, 2022), *R & R adopted*, 2022 WL 3648170 (E.D. Mich. Aug. 24, 2022)

Butler v. Papendick, No. 2:20-CV-11100, 2022 WL 6568191 (E.D. Mich. Aug. 8, 2022), *R & R adopted*, 2022 WL 4594594 (E.D. Mich. Sept. 30, 2022)

Partee v. Trowbridge, No. 2:20-CV-12586, 2022 WL 6581114 (E.D. Mich. Aug. 3, 2022), *R & R adopted*, 2022 WL 4299357 (E.D. Mich. Sept. 19, 2022)

Shelton v. Oaks, No. 2:21-CV-11614, 2022 WL 6584563 (E.D. Mich. July 30, 2022), *R & R adopted*, 2022 WL 4117023 (E.D. Mich. Sept. 9, 2022)

Brown v. Comm'r of Soc. Sec., No. 2:21-CV-12025, 2022 WL 3695485 (E.D. Mich. July 27, 2022), *R & R adopted*, 2022 WL 3686425 (E.D. Mich. Aug. 24, 2022)

Fenner v. Kijakazi, No. 2:21-CV-10180, 2022 WL 3269959 (E.D. Mich. July 25, 2022), *R & R adopted*, 2022 WL 3229938 (E.D. Mich. Aug. 10, 2022)

Pudney v. Comm'r of Soc. Sec., No. 21-CV-10648, 2022 WL 3269957 (E.D. Mich. July 22, 2022), *R & R adopted*, 2022 WL 3229941 (E.D. Mich. Aug. 10, 2022)

Harp v. Austin, No. 2:21-CV-12446, 2022 WL 3365844 (E.D. Mich. July 19, 2022), *R & R adopted*, 2022 WL 3362505 (E.D. Mich. Aug. 15, 2022)

Seymore v. Ferguson, No. 4:20-CV-13269, 2022 WL 6601306 (E.D. Mich. July 5, 2022), *R & R adopted in part and rejected in part*, 2022 WL 4594591 (E.D. Mich. Sept. 30, 2022)

Washington v. AT&T Umbrella Benefit Plan No. 3, No. 2:21-CV-11397, 2022 WL 4826575 (E.D. Mich. June 28, 2022), *R & R adopted in part and rejected in part*, 2022 WL 4553059 (E.D. Mich. Sept. 29, 2022)

Halvorsen v. Comm'r of Soc. Sec., No. 21-CV-10951, 2022 WL 2232490 (E.D. Mich. June 2, 2022), *R & R adopted*, 2022 WL 2230662 (E.D. Mich. June 21, 2022)

Rogers v. Bush, No. 20-CV-11627, 2022 WL 2793593 (E.D. Mich. May 11, 2022), *R & R adopted*, 2022 WL 2791316 (E.D. Mich. July 15, 2022)

Allstate Ins. Co. v. 411 Help, LLC, No. 2:20-CV-12939, 2022 WL 3337138 (E.D. Mich. Apr. 29, 2022), *R & R adopted in part and rejected in part*, 2022 WL 4594593 (E.D. Mich. Sept. 29, 2022)

Lindsey v. Comm'r of Soc. Sec., No. 4:21-CV-10590, 2022 WL 1397196 (E.D. Mich. Apr. 11, 2022), *R & R adopted*, 2022 WL 1377783 (E.D. Mich. May 3, 2022)

Dobronski v. Royal Neighbors of Am., No. 22-10009, 2022 WL 1234088 (E.D. Mich. Mar. 31, 2022), *R & R adopted*, 2022 WL 1227960 (E.D. Mich. Apr. 26, 2022)

Whorton v. Dinsa, No. 2:21-CV-11722, 2022 WL 1216306 (E.D. Mich. Mar. 28, 2022), *R & R adopted*, 2022 WL 1213109 (E.D. Mich. Apr. 25, 2022)

Gavrilovic v. T-Mobile USA, Inc., No. 21-12709, 2022 WL 1086136 (E.D. Mich. Mar. 25, 2022), *R & R adopted*, 2022 WL 1085674 (E.D. Mich. Apr. 11, 2022)

Smith v. Comm'r of Soc. Sec., No. 2:21-CV-10093, 2022 WL 1052427 (E.D. Mich. Mar. 4, 2022), *R & R adopted*, 2022 WL 965022 (E.D. Mich. Mar. 30, 2022)

Huizar v. Comm'r of Soc. Sec., No. 21-CV-10859, 2022 WL 2531754 (E.D. Mich. Mar. 4, 2022), *R & R adopted*, 2022 WL 2531754 (E.D. Mich. July 7, 2022)

Bear v. Credit Acceptance Corp., No. 5:21-CV-12353, 2022 WL 2405215 (E.D. Mich. Mar. 3, 2022)

Harp v. Austin, No. 2:21-CV-12446, 2022 WL 956328 (E.D. Mich. Mar. 1, 2022), *R & R adopted*, 2022 WL 957546 (E.D. Mich. Mar. 29, 2022)

Louden v. Comm'r of Soc. Sec., No. 5:21-CV-10027, 2022 WL 1436226 (E.D. Mich. Feb. 25, 2022), *R & R adopted*, 2022 WL 1426981 (E.D. Mich. May 5, 2022)

Thompson v. Wal-Mart Stores E., LP, No. 2:21-CV-10168, 2022 WL 704938 (E.D. Mich. Feb. 18, 2022), *R & R adopted*, 2022 WL 697781 (E.D. Mich. Mar. 8, 2022)

Gabriel v. Comm'r of Soc. Sec., No. 2:21-CV-10529, 2022 WL 1482013 (E.D. Mich. Feb. 1, 2022), *R & R adopted*, 2022 WL 1481847 (E.D. Mich. May 9, 2022)

Harp v. Austin, No. 2:21-CV-12446, 2022 WL 604169 (E.D. Mich. Jan. 31, 2022), *R & R adopted*, 2022 WL 600955 (E.D. Mich. Feb. 28, 2022)

Garrison v. Corbin, No. 2:21-CV-11857, 2022 WL 509341 (E.D. Mich. Jan. 27, 2022), *R & R adopted*, 2022 WL 507433 (E.D. Mich. Feb. 18, 2022)

Mahar v. Comm'r of IRS, No. 2:21-CV-11694, 2022 WL 2405489 (E.D. Mich. Jan. 20, 2022)

Coates v. Castilla, No. 2:20-CV-11101, 2022 WL 2162926 (E.D. Mich. Jan. 20, 2022), *R & R adopted*, 2022 WL 2161484 (E.D. Mich. June 15, 2022)

Clark v. Owens, No. 2:21-CV-10631, 2021 WL 7448515 (E.D. Mich. Dec. 14, 2021), *R & R adopted*, 2022 WL 565587 (E.D. Mich. Feb. 24, 2022)

Mahar v. Comm'r of IRS, No. 2:21-CV-11694, 2021 WL 9003587 (E.D. Mich.

Dec. 13, 2021)

Clark v. Owens, No. 2:21-CV-10631, 2021 WL 5817898 (E.D. Mich. Nov. 10, 2021), *R & R adopted*, 2021 WL 5798034 (E.D. Mich. Dec. 7, 2021)

King v. Advanced Corr. Healthcare, Inc., No. 2:21-CV-11369, 2021 WL 5315403 (E.D. Mich. Oct. 26, 2021), *R & R adopted*, 2021 WL 5304005 (E.D. Mich. Nov. 15, 2021)

Morris v. Sewell, No. 2:20-CV-13240, 2021 WL 5411956 (E.D. Mich. Oct. 26, 2021), *R & R adopted*, 2021 WL 5396102 (E.D. Mich. Nov. 18, 2021)

Al-Dolemy v. Kato, No. 2:21-CV-10809, 2021 WL 6493857 (E.D. Mich. Oct. 26, 2021), *R & R adopted*, 2022 WL 125025 (E.D. Mich. Jan. 12, 2022)

Wright v. DeJoy, No. 4:21-CV-10871, 2021 WL 5858578 (E.D. Mich. Oct. 6, 2021), *R & R adopted*, 2021 WL 5847406 (E.D. Mich. Dec. 9, 2021)

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. *Thompson v. Wal-Mart Stores E., LP*, No. 2:21-CV-10168, 2022 WL 704938 (E.D. Mich. Feb. 18, 2022), *R & R adopted*, 2022 WL 697781 (E.D. Mich. Mar. 8, 2022)

This is a negligence case where the plaintiff alleged a Wal-Mart employee pushed carts into the plaintiff's back. After removal from state court to federal court, I ordered the parties to address whether diversity jurisdiction existed. Having found diversity jurisdiction existed, I ruled on a subsequent defense motion to dismiss for failure to prosecute and failure to obey a discovery order. In a report and recommendation, I recommended granting the motion to dismiss for failure to prosecute and failure to obey a discovery order. United States District Judge George Caram Steeh adopted my report and recommendation and dismissed the case with prejudice.

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2. *Gabriel v. Comm'r of Soc. Sec.*, No. 2:21-CV-10529, 2022 WL 1482013 (E.D. Mich. Feb. 1, 2022), *R & R adopted*, 2022 WL 1481847 (E.D. Mich. May 9, 2022)

This was a Social Security Act case in which I reviewed an administrative law judge's decision denying the plaintiff's application for disability insurance benefits. Both parties filed motions for summary judgment. The plaintiff argued that the ALJ had not supported their decision regarding the plaintiff's residual function capacity with substantial evidence. The Commissioner of the Social Security Administration argued that the ALJ appropriately weighed the medical evidence as to the plaintiff's residual function capacity. In a report and recommendation, I determined that the plaintiff's motion should be granted, that the Commissioner's motion should be denied, and that the case be remanded for further proceedings. Neither party opposed my decision, which was then adopted by United States District Judge Victoria A. Roberts.

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3. *Chamblis v. Kijakazi*, No. 1:20-CV-12984, 2022 WL 3655326 (E.D. Mich. Aug. 8, 2022), *R & R adopted*, 2022 WL 3648170 (E.D. Mich. Aug. 24, 2022)

This was a Social Security Act case in which I reviewed an administrative law judge's decision denying the plaintiff's application for disability insurance benefits. Both parties filed motions for summary judgment. The plaintiff contended that the Social Security Appeals Council failed to provide due process, the ALJ erred in assessing the severity of plaintiff's traumatic brain injury, additional medical evidence existed which was not presented to the ALJ, and the ALJ erred in failing to order and conduct additional medical examinations. In a report and recommendation, I found that the plaintiff's arguments lacked merit and recommended that the court grant the defendant's motion for summary judgment. United States District Judge Thomas Ludington adopted my report and recommendation and entered judgment for the defendant.

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4. *Gavrilovic v. T-Mobile USA, Inc.*, No. 21-12709, 2022 WL 1086136 (E.D. Mich. Mar. 25, 2022), *R & R adopted*, No. 21-CV-12709, 2022 WL 1085674 (E.D. Mich. Apr. 11, 2022)

This case involved a motion to compel arbitration and dismiss the case, or in the alternative, stay the proceedings until the completion of private arbitration. The plaintiff alleged that the defendant, his cellphone service carrier, had caused him a loss of $1.16 million in cryptocurrency due to an employee's negligence. The plaintiff asserted claims of negligence and violations of the Federal Communications Act. The defendant moved to compel arbitration. This case involved the arbitration agreements of the defendant and a different cellphone carrier with which the defendant's parent company had merged. After a hearing, I

determined that the motion to compel arbitration should be granted, and my report and recommendation was adopted by Judge Nancy G. Edmunds. Judge Edmunds entered judgment for the defendant.

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5. *K Squared Constr. Inc. v. Slate Asset Mgmt. L.P.*, No. 2:20-CV-10854 (E.D. Mich. Apr. 14, 2022)

This was a breach of contract action. The plaintiff alleged that the defendant did not fully pay for the work of the plaintiff's general commercial contractor on several developments in different states. The case involved disputed oral agreements and subcontracts, as well as complicated calculations. I led the parties in an extensive settlement conference that resulted in a negotiated settlement.

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6. *Dobronski v. Royal Neighbors of Am.*, No. 22-CV-10009, 2022 WL 1234088 (E.D. Mich. Mar. 31, 2022), *R & R adopted*, 2022 WL 1227960 (E.D. Mich. Apr. 26, 2022)

The plaintiff asserted violations of the Telephone Consumer Protection Act of 1991, the Michigan Home Solicitation Sales Act, and the Michigan Telephone Companies as Common Carriers Act. After being referred all pretrial matters, I issued several orders for case management, including an order directing the plaintiff to establish personal jurisdiction. The plaintiff moved to remand the case for failure to comply with the rule of unanimity under 28 U.S.C. § 1446(b)(2)(A), which the defendants opposed. After a hearing, I determined that the motion to remand should be denied, and my decision was adopted. This case is pending.

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7. *Bear v. Credit Acceptance Corp.*, No. 5:21-CV-12353, 2022 WL 2405215

(E.D. Mich. Mar. 3, 2022)

This case involved a motion to compel arbitration and dismiss the case, or in the alternative, to stay all proceedings until the completion of private arbitration. The plaintiffs had signed a retail installment contract with one of the defendants, which allowed a right to reject arbitration via written notice signed by the buyers. The plaintiffs' counsel sent a written rejection notice on his clients' behalf. The defendants moved to compel arbitration, arguing that the notice was invalid because the contract language required the buyers to sign the notice. After a hearing, I determined that the notice was invalid. In a report and recommendation, I recommended that the defendant's motion to compel arbitration be granted. This case is pending.

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8. *United States v. Thomas*, No. 2:22-CR-20365, Dkt. 11 (E.D. Mich. July 13, 2022), *aff'd*, 2022 WL 3044632 (E.D. Mich. Aug. 2, 2022). Decision supplied.

The government charged Mr. Thomas with conducting a straw purchase of a firearm for his friend, who allegedly utilized the firearm to murder a police officer. The government moved to detain Mr. Thomas pending trial, which he opposed. After a lengthy detention hearing, I ordered detention pending trial. The defendant moved to revoke my order and sought review before United States District Judge Gershwin A. Drain. Judge Drain denied the motion and affirmed my decision.

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9. *Shelton v. Oaks*, No. 2:21-CV-11614, 2022 WL 6584563 (E.D. Mich. July 30, 2022), *R & R adopted*, 2022 WL 4117023 (E.D. Mich. Sept. 9, 2022)

This case involves an incarcerated person with spina bifida who alleges that prison guards and officials failed for more than a year to provide him with necessary leg braces, causing physical pain. Defendants filed a motion for summary judgment and contended that the plaintiff failed to exhaust administrative remedies. In a report and recommendation, I recommended that the Court deny the defendants' motion and find that exhaustion occurred as to one defendant and prison officials overlooked defects in the plaintiff's grievances as to the remaining defendants, so exhaustion could not be asserted. Judge George Caram Steeh adopted my report and recommendation.

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10. *Abcumby v. Michigan Dep't of Corr.*, No. 2:21-CV-11281, 2022 WL 4459889 (E.D. Mich. Sept. 7, 2022), *R & R adopted*, 2022 WL 4456239 (E.D. Mich. Sept. 23, 2022)

This case involves an incarcerated person who alleges that a guard violated her constitutional rights by strip searching her in a shower area exposed to passersby. Defendants filed a motion to dismiss and a motion for summary judgment. In a report and recommendation, I found that while the plaintiff failed to sufficiently allege facts to establish named prison officials' supervisory liability, she sufficiently alleged facts which could establish cruel and unusual punishment. I recommended that the Court grant in part and deny in part the defendants' motions. Chief Judge Sean F. Cox adopted my report and recommendation.

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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. *Thompson v. Wal-Mart Stores E., LP*, No. 2:21-CV-10168, 2022 WL 704938 (E.D. Mich. Feb. 18, 2022), *R & R adopted*, 2022 WL 697781 (E.D. Mich.

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2. *Gabriel v. Comm'r of Soc. Sec.*, No. 2:21-CV-10529, 2022 WL 1482013 (E.D. Mich. Feb. 1, 2022), *R & R adopted*, 2022 WL 1481847 (E.D. Mich. May 9, 2022)

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3. *Fenner v. Kijakazi*, No. 2:21-CV-10180, 2022 WL 3269959 (E.D. Mich. July 25, 2022), *R & R adopted*, 2022 WL 3229938 (E.D. Mich. Aug. 10, 2022)

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4. *Gavrilovic v. T-Mobile USA, Inc.*, No. 21-12709, 2022 WL 1086136 (E.D. Mich. Mar. 25, 2022), *R & R adopted*, 2022 WL 1085674 (E.D. Mich. Apr. 11, 2022)

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5. *Bear v. Credit Acceptance Corp.*, No. 21-CV-12353, 2022 WL 2405215 (E.D. Mich. Mar. 3, 2022)

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6. *Dobronski v. Royal Neighbors of Am.*, No. 22-10009, 2022 WL 1234088 (E.D. Mich. Mar. 31, 2022), *R & R adopted*, 2022 WL 1227960 (E.D. Mich. Apr. 26, 2022)

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7. *Lindsey v. Comm'r of Soc. Sec.*, No. 4:21-CV-10590, 2022 WL 1397196 (E.D. Mich. Apr. 11, 2022), *R & R adopted*, 2022 WL 1377783 (E.D. Mich. May 3, 2022)

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8. *Smith v. Comm'r of Soc. Sec.*, No. 2:21-CV-10093, 2022 WL 1052427 (E.D. Mich. Mar. 4, 2022), *R & R adopted*, 2022 WL 965022 (E.D. Mich. Mar. 30, 2022)

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9. *Shelton v. Oaks*, No. 2:21-CV-11614, 2022 WL 6584563 (E.D. Mich. July 30, 2022), *R & R adopted*, 2022 WL 4117023 (E.D. Mich. Sept. 9, 2022)

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10. *Al-Dolemy v. Kato*, No. 2:21-CV-10809, Dkt. 127 (E.D. Mich. Sept. 29, 2022). Decision supplied.

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

I have searched electronic databases to determine whether certiorari was requested or granted in any of my cases. I did not find any in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

To the best of my knowledge, none of the final orders or reports and recommendations I authored in civil cases have been reversed. Four reports and recommendations I authored in civil cases have been adopted in part and rejected in part, as follows:

Cladera v. Comm'r of Soc. Sec., No. 2:21-CV-11684, 2022 WL 6581089 (E.D. Mich. Aug. 9, 2022), *R & R adopted in part and rejected in part*, 2022 WL 4553064 (E.D. Mich. Sept. 29, 2022). In this social security disability benefits case, I found that the Administrative Law Judge failed to explain the lack of incorporation of balance and noise restrictions in a residual function capacity, but that it was harmless error. I recommended granting the defendant's motion for summary judgment. The plaintiff lodged two objections to my report and recommendation, and Judge Terrence G. Berg overruled one objection and sustained one objection and accepted in part and rejected in part the report and recommendation.

Seymore v. Ferguson, No. 4:20-CV-13269, 2022 WL 6601306 (E.D. Mich. July 5, 2022), *R & R adopted in part and rejected in part*, 2022 WL 4594591 (E.D. Mich. Sept. 30, 2022). This is a civil case in which an incarcerated person alleged that his First Amendment rights were violated after he received a verbal warning that his visit would be terminated after he complained about the cold temperature in the visiting room. Allegedly, the plaintiff also suffered retaliation after an attorney visit was delayed an hour and forty-five minutes. I recommended granting the defendants' motion to dismiss the First Amendment retaliation claims and state law annoying, harassing, assaulting, or disturbing an inmate claim. Judge Shalina D. Kumar adopted my report and recommendation as to the state law claim and rejected my report and recommendation as to the First Amendment retaliation claims.

Washington v. AT&T Umbrella Benefit Plan No. 3, No. 2:21-CV-11397, 2022 WL 4826575 (E.D. Mich. June 28, 2022), *R & R adopted in part and rejected in*

part, 2022 WL 4553059 (E.D. Mich. Sept. 29, 2022). This is an ERISA case in which an individual alleged that her employer's disability benefit plan erroneously denied short-term benefits for three different time periods, amounting to three claims. Cross-motions for summary judgment ensued. In my report and recommendation, I recommended granting in part and denying in part each party's motion and remanding two of the claims for review by the plan and approving denial of one of the claims by the plan. Judge Terrence G. Berg adopted my report and recommendation in part and remanded one claim while entering summary judgment for the plan on one claim.

Allstate Ins. Co. v. 411 Help, LLC, No. 2:20-CV-12939, 2022 WL 3337138 (E.D. Mich. Apr. 29, 2022), *R & R adopted in part and rejected in part*, 2022 WL 4594593 (E.D. Mich. Sept. 29, 2022). This is a civil case in which several medical providers filed a counter-complaint against several insurance companies, seeking to collect no-fault insurance benefits due for services provided to the defendants' policyholders. The counter-plaintiffs filed a motion for leave to amend their counter-complaint to add a Racketeer Influenced and Corrupt Organizations Act (RICO) claim, two 42 U.S.C. § 1981 claims, and a Michigan Unfair Trade Practices Act (MUPTA) claim. In their proposed counter-complaint, the counter-plaintiffs allege that the insurance companies engaged in an unlawful pattern of automatically denying their claims, discriminated against the counter-plaintiffs and policyholders on the basis of race, and violated MUPTA. In my report and recommendation, I recommended that the motion be granted as to the RICO and MUPTA claims and denied as to the § 1981 claims. Judge Linda V. Parker adopted my report and recommendation as to the MUPTA and § 1981 claims and rejected my report and recommendation as to the RICO claims.

District judges revoked my custodial orders in four criminal cases, as follows:

United States v. Edmunds, No. 2:21-MJ-30505, Dkt. 12 (E.D. Mich. Nov. 15, 2021). Copy supplied. This case involved a defendant charged with theft or embezzlement of union funds, among other charges. The government moved for detention pending trial, which the defense opposed. After a hearing, I ordered the defendant's release on bond and set various conditions of release to ensure the safety of the community and the defendant's appearance in court. Several months later, the defendant moved to modify and loosen the conditions of bond, and Chief District Judge Sean F. Cox reversed my order and ordered the defendant to be detained. *United States v. Edmunds*, No. 21-CR-20721, 2022 WL 738734 (E.D. Mich. Mar. 11, 2022).

United States v. Durfield, No. 21-MJ-30566, Dkt. 9 (E.D. Mich. Dec. 2, 2021). Copy supplied. The government moved to revoke bond for drug use. Following a hearing, I denied the government's motion and found that appropriate conditions of release existed, including daily drug testing on weekdays, which allowed the defendant to continue to work at her new job and support her minor child in cancer treatment. The government appealed to the Eastern District of Tennessee,

where the case was pending, and United States District Judge Thomas A. Varlan stayed my order of release and ordered that the defendant be detained pending a hearing on the government's request. *United States v. Durfield*, No. 19-CR-00187, Dkt. 228 (E.D. Tenn. Dec. 6, 2021). Copy supplied. Ultimately, the defendant waived her right to the hearing and United States Magistrate Judge Bruce Guyton revoked the release order and ordered detention. *United States v. Durfield*, No. 19-CR-00187, Dkt. 255 (E.D. Tenn. Jan. 12, 2022). Copy supplied.

United States v. Andino, No. 2:22-CR-20090, Dkt. 10 (E.D. Mich. Feb. 9, 2022). Copy supplied. After the government requested detention in this illegal reentry case, I ordered the government to establish, prior to a detention hearing, its basis for requesting detention. Ultimately, I held a detention hearing and ordered the defendant's detention pending trial. The defense appealed and moved for immediate release, which the government opposed. United States District Judge Denise Page Hood agreed with my decision to require the government to establish a basis to hold a detention hearing but reversed my detention order. *United States v. Andino*, No. 22-CR-20090, Dkt. 30 (E.D. Mich. May 3, 2022). Copy supplied. Judge Hood found that the government did not meet its burden under 18 U.S.C. § 3142(f)(2)(A), which required the government to show a "serious risk of flight" before a detention hearing may be set, and found that conditions of bond existed to assure the defendant's appearance at court proceedings.

United States v. Dabney, No. 22-MJ-30063 (E.D. Mich. Feb. 11, 2022). The government moved to detain a defendant pending trial in a drug distribution case. Mr. Dabney contested detention. After argument, I issued an order to release the defendant on bond, having agreed with the Pretrial Services Agency that conditions of bond existed that could assure the safety of the community and the defendant's appearance in court. The government appealed to the District of North Dakota, where this case is pending, and Chief Judge Peter D. Welte granted the government's motion to revoke the release order, noting that the decision was a close call. *United States v. Dabney*, No. 3:21-CR-36-3, 2022 WL 844419 (D.N.D. Mar. 22, 2022).

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a magistrate judge, the majority of my decisions are unpublished opinions although some may be reported by Westlaw/Lexis. All my opinions and orders are filed with our court's electronic case filing system.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have not written any significant opinions on federal or state constitutional issues.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The United States District Court for the Eastern District of Michigan, where I serve as a magistrate judge, has a system that flags newly assigned cases based on recusal criteria identified by each judge. This system permits judges to identify potential conflicts *ex ante*, and then decide whether to recuse *sua sponte* in a newly assigned case. I also review and follow the guidance in the Code of Conduct for United States Judges in determining whether recusal is appropriate. In addition, as a federal magistrate judge, I have sought to comply with 28 U.S.C. § 455, disqualifying myself in specific circumstances commanded by the statute and in any case where my impartiality might reasonably be questioned.

No litigant or party has ever requested that I recuse myself due to an asserted conflict of interest. I have recused myself *sua sponte* in one case and returned the case to the Clerk's Office for reassignment. I can provide additional details to the Committee upon request.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for

elective office or unsuccessful nominations for appointed office.

I have not held public office other than judicial office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 2008, I was a field volunteer in Indiana for then-Senator Barack Obama the weekend prior to the November 2008 election.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 2009 to 2010, I served as a law clerk to the Honorable W. Louis Sands of the United States District Court for the Middle District of Georgia. From 2010 to 2011, I served as a law clerk to the Honorable Damon J. Keith, Circuit Judge of the United States Court of Appeals for the Sixth Circuit.

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;

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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.

Since 2021, I have served as a magistrate judge on the federal district court in Detroit, Michigan. Immediately prior to this current service, I served as an Assistant United States Attorney for more than nine years in Columbus, Ohio and Detroit, Michigan. I became an Assistant United States Attorney in 2012. I practiced civil and criminal law in a variety of areas, including firearms offenses, asset forfeiture, international and domestic narcotics trafficking, money laundering, fraud, and other areas. For approximately three years, I served as the Coordinator of the Project Safe Neighborhoods program where I oversaw the intake of firearms cases. I instituted the Southern District of Ohio's practice of prosecuting individuals who illegally possessed firearms after having been convicted of domestic violence offenses.

I served as an associate in a law firm on two different occasions, after graduation from 2007 to 2008, and after clerking in 2011, primarily practicing labor and employment law in federal, state, and local courts, as well as administrative agencies. I also counseled entities regarding supplier diversity designations. I conducted workplace investigations, trained managers on best employment practices, and counseled small businesses regarding diverse business designations or internal workplace issues (primarily regarding discrimination claims). My pro bono clients were prisoners alleging deprivations of their rights.

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

As a prosecutor, I represented the United States and advocated for victims and fair sentences for defendants. In private practice as a law firm

associate, I represented small to large employers and individuals in general civil litigation, labor and employment law, and ERISA litigation.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Prior to my appointment as a federal magistrate judge, I regularly appeared in federal court in the Southern District of Ohio as an Assistant United States Attorney between 2016 and 2021. I regularly appeared in federal court in the Eastern District of Michigan between 2012 and 2016. In private practice, between 2007 and 2009 and 2011 and 2012, I occasionally appeared in federal court in the Northern District of Illinois and Illinois state courts and administrative agencies.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: 3%
   3. other courts: 0%
   4. administrative agencies: 2%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried four cases to verdict. I served as lead counsel in three of these cases, while I acted as associate counsel in another. I also authored written briefs in four cases at the United States Court of Appeals for the Sixth Circuit.

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. *United States v. Doyle*, Case No. 16-CR-145 (S.D. Ohio Sept. 27, 2016) (Sargus, J.), *aff'd*, 720 F. App'x 271 (6th Cir. 2018) (Suhrheinrich, Griffin, Thapar, JJ.), 2019 WL 6351255 (S.D. Ohio Nov. 27, 2019) (Vascura, Mag. J.), *R & R adopted*, 2020 WL 415895 (S.D. Ohio Jan. 27, 2020) (Sargus, J.), 2021 WL 4306101 (S.D. Ohio Sept. 22, 2021) (Vascura, Mag. J.), *R & R adopted*, 2021 WL 5810545 (S.D. Ohio Dec. 7, 2021) (Sargus, J.)

I served as lead counsel at trial, sole counsel on appeal, and lead counsel in habeas proceedings in this illegal firearms possession case from 2016 to 2021. A jury convicted Mr. Doyle, a documented sex offender, of being a felon in possession of a firearm after a woman's testimony established that he threatened her with a firearm. I prepared the reluctant witness, a woman with solicitation convictions who was fearful of the defendant and expressed extreme hesitancy in testifying one hour before trial began. I wrote sentencing memoranda and argued at sentencing with co-counsel. Mr. Doyle received a prison sentence of 100 months. The Sixth Circuit affirmed. I wrote the government's brief. During subsequent habeas proceedings, Magistrate Judge Chelsey M. Vascura recommended the dismissal of all claims except for ineffective assistance of counsel. Judge Edmund A. Sargus, Jr. accepted and adopted Magistrate Judge Vascura's recommendation. Magistrate Judge Vascura held an evidentiary hearing on the remaining claim in August 2021, where Mr. Doyle represented himself with standby counsel present. Magistrate Judge Vascura recommended denial of all requested relief. Judge Sargus again accepted and adopted Magistrate Judge Vascura's recommendation.

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2. *United States v. Draper*, No. 2:19-CR-125 (S.D. Ohio 2019) (Morrison, J.), *aff'd*, 2021 WL 2948857 (6th Cir. July 14, 2021) (Sutton, C.J., Cole, Readler, JJ.)

I served as lead counsel on all proceedings and supervised co-counsel in her first federal trial in this illegal firearm possession case, part of the anti-domestic violence initiative I started in the Southern District of Ohio. I represented the United States in this case from 2018 to 2021, through the initial investigation, a suppression hearing, contested evidentiary hearings, trial, sentencing, and appeal. I co-wrote briefs and co-presented oral arguments on two motions to suppress, two motions to dismiss, and two motions in limine. I argued in opposition to a motion to dismiss the jury venire. Mr. Draper, a serial

abuser of intimate partners and convicted arsonist, tried to frame his girlfriend after she attempted to end their relationship. Mr. Draper alleged that she shot at him and burned his vehicle. Thorough investigation established his fabrications and officers discovered a loaded firearm in his nightstand. I coordinated victim support services to assist Mr. Draper's girlfriend. We defeated multiple evidentiary and dispositive motions filed by Mr. Draper, including a motion to suppress. A jury convicted Mr. Draper of possessing a firearm following conviction of a misdemeanor crime of domestic violence. Mr. Draper received a prison sentence of 27 months. On appeal, I wrote the government's brief, and the conviction was affirmed.

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3. *United States v. Golon-Valenzuela*, No. 2:18-CR-195 (S.D. Ohio); *United States v. Ramos Chirino*, No. 2:17-CR-207 (S.D. Ohio)

I began working as co-counsel in this multi-defendant, multiple case matter, in 2017, but became lead counsel in October 2019 after my co-counsel became United States Attorney and withdrew from the case. I continued to serve as lead counsel through August 2021. In a prosecution of first impression in the Southern District of Ohio, we initiated, and I maintained and oversaw, this case and other related cases which involved an international narcotic trafficking conspiracy spanning from Colombia through Central America, Mexico, and the United States wherein small vessels were used to smuggle and attempt to smuggle thousands of kilograms of cocaine into the United States. I coordinated the extradition of Mr. Golon-Valenzuela from Panama to the United States and supervised the investigation which resulted in his guilty plea. Mr. Golon-Valenzuela participated in the conspiracy and paid to ship cocaine from Colombia destined for the United States. Seized cocaine shipments included 880 kilograms of cocaine near the Guatemala/Mexico border, 720 kilograms of cocaine near the Galapagos Islands, Ecuador, and 34 kilograms of cocaine in Guatemala. I led teams of agents in Ohio, Central America, and Colombia, and marshaled evidence from multiple countries. I consulted Interpol and the Department of State to secure publication of international arrest warrants, marshal evidence from

foreign countries, and extradite multiple defendants. I negotiated several guilty pleas. United States District Judge James L. Graham presided over the cases. Prison sentences ranged from 60 to 140 months.

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4. *United States v. Brooks*, No. 2:17-CR-54 (S.D. Ohio)

From 2016 through 2020, I served as sole counsel in this 13-defendant conspiracy case involving bank fraud conspiracy and possession of stolen mail. I wrote four motions to revoke bond and presented argument at four separate hearings on the motions. United States postal carriers illegally used and shared postal keys with non-employees in a sophisticated scheme to steal thousands of checks and money orders from blue postal service mailboxes throughout metropolitan Columbus and illegally cash the items via the use of third-party checking accounts. Each defendant ultimately entered a plea of guilty and received sentences which included restitution orders. I also oversaw three separate spinoff investigations which together resulted in the recovery of hundreds of thousands of dollars of stolen checks and money orders. I marshaled the services of an experienced victim-witness coordinator to answer anxious calls from, and provide information to, hundreds of individuals and businesses about missing bill payments, birthday gifts, and numerous other monetary concerns. I advised the United States Postal System on the adoption of investigatory and practical methods to forestall similar offenses. I wrote 13 sentencing memoranda and presented argument at 13 separate sentencing hearings. Sentences ranged from probation to 42 months of imprisonment. United States District Judge James L. Graham presided over the case.

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5. *United States v. Smoot*, No. 2:19-CR-020 (S.D. Ohio)

From 2018 to 2021, I served as lead counsel in this illegal firearms possession case that was continued at the defendant's request on the day of trial. Mr. Smoot possessed a firearm following conviction of a felony during a shootout in a public park where 5- and 10-year-old girls were shot. Despite the presence of hundreds of potential witnesses, few

provided information to law enforcement officers. The investigation tied Mr. Smoot (via DNA evidence) to a firearm recovered from a parked vehicle after the shooting. I argued at three detention hearings and wrote responses to five motions for release from custody. I argued at a suppression hearing and wrote the response to the motion to suppress. I responded to three motions in limine and presented argument on two of the motions. I trained a Special Assistant United States Attorney in what would have been his first trial. After the continuance, Mr. Smoot ultimately pled guilty to being a felon in possession of a firearm. Mr. Smoot received a prison sentence of 41 months. United States District Judge Sarah D. Morrison presided over this matter.

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6. *United States v. Holter*, No. 2:17-CR-74 (S.D. Ohio)

From 2016 to 2017, I served as sole criminal counsel in this case. I led the investigation which established that Ms. Holter, a bank employee, was the sole individual present in the bank before it opened on dozens of occasions where she was seen on surveillance removing the cash cassette from the ATM and then replacing it. Audits showed significant sums of currency missing from the ATMs. Nevertheless, Ms. Holter vigorously denied guilt for several months, even after she admitted to having possessed $81,360 in $20 bills. She contended that she discovered the money in a bag at the end of her driveway. The investigation I led also established that Ms. Holter had paid off her mortgage at the time of the thefts and that she lied about having a lucrative puppy selling business which she claimed established a financial alibi. Ultimately, Ms. Holter admitted to embezzlement/theft by a bank employee and that her crime involved $318,400. I engaged co-counsel from the civil financial litigation unit to ensure that Ms. Holter's

sentence included full restitution. I wrote the sentencing memorandum and argued at the sentencing hearing. Ms. Holter received a sentence of 6 months of home confinement followed by a prison term of 12 months. United States District Judge Edmund A. Sargus, Jr. presided over the case.

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7. *United States v. McCauley*, No. 2:17-CR-90 (S.D. Ohio.)

From 2016 to 2021, I served as sole counsel in this conspiracy case which involved identity theft and wire fraud. I led the prosecution of Mr. McCauley and four other individuals, which established that they operated an identity theft ring and utilized fraudulent identification documents to open lines of credit and purchase high-end electronic and telecommunications equipment and clothing. The criminal conduct spanned multiple states in the Midwest. All five defendants entered pleas of guilty. I wrote all sentencing memoranda and argued at all five sentencing hearings. I also worked to ensure that the foot-soldiers who carried out Mr. McCauley's scheme received necessary treatment for their narcotics addictions in and out of prison, as their addictions had contributed to their criminal involvement. Sentences ranged from probation to 60 months in prison. United States District Judge Michael H. Watson presided over these proceedings.

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8. *United States v. Imes*, No. 2:18-CR-111 (S.D. Ohio); *United States v. Imes*, No. 2:19-CR-60 (S.D. Ohio); *United States v. Johnson*, No. 2:19-CR-210 (S.D. Ohio); *United States v. Silva*, No. 2:19-CR-91 (S.D. Ohio)

From 2018 to 2021, I served as co-counsel in this multi-defendant series of chop shop conspiracy cases which involved the theft of heavy-duty trucks, trailers, and sale of stolen auto parts throughout the Midwest. Several small vehicle-sales businesses in metropolitan Columbus, Ohio reportedly suffered so many repeated losses that they were near closure due to Mr. Imes' and his co-conspirators' crimes. Each defendant entered pleas of guilty and Mr. Imes stated that he earned approximately $15,000 to $20,000 per week during his criminal enterprise. During the case, Mr. Imes absconded from bond with his wife's aid. I successfully briefed a motion to revoke Mr. Imes' bond and appeared for argument

which did not occur as Mr. Imes absconded. I co-led the investigation that successfully apprehended him and secured guilty pleas from him and his co-conspirators. I ensured that restitution orders were obtained. I argued at three sentencing hearings and wrote the corresponding sentencing memoranda. Sentences ranged from probation to 120 months in prison. United States District Judge James L. Graham presided over these matters.

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9. *United States v. Wilder*, No. 2:18-CR-10 (S.D. Ohio); *United States v. Chester*, No. 2:18-CR-11 (S.D. Ohio); *United States v. Flood*, No. 2:18-CR-12 (S.D. Ohio)

From 2017 through 2020, I solely prosecuted these companion cases involving a public standoff between alleged gang-members who wielded assault rifles and numerous firearms in a busy apartment complex occupied by several children. Previously, each of the three defendants had been convicted of felonies and therefore could not legally possess firearms. I argued at a detention hearing and subsequently successfully briefed and argued a motion to revoke an order of bond for one of the defendants who posed a great risk of harm to the community. Ultimately, each defendant admitted guilt. Sentences ranged from 33 to 51 months in prison. United States District Judges James L. Graham and Edmund A. Sargus, Jr. presided over these matters.

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Columbus, OH 43219
(614) 237-8050

10. *United States v. Zigmond*, No. 2:15-CR-20283 (E.D. Mich.)

From 2012 through 2016, I initiated and ultimately co-led the investigation and prosecution of Dr. Zigmond and nine other individuals. We oversaw a team of financial and narcotics agents and, after two wiretaps, discovered that Zigmond, a chiropractor, had conspired with at least two medical doctors, and others, to distribute 6,000 fraudulent prescriptions of oxycodone. I reviewed and approved nine search and seizure warrants that resulted in the capture of more than $2 million in cash proceeds, and multiple

firearms, and ammunition. I helped write and secure an indictment and two superseding indictments before a grand jury. I also assisted in planning undercover agent maneuvers that resulted in the acquisition of useful evidence. I wrote briefs regarding bond and source of collateral motions, and argued at a bond hearing. After I left the office, co-counsel successfully secured guilty pleas from all ten defendants as a result of my investigation, prosecution, and efforts to have the lead defendant, Zigmond, accept responsibility for his wide-ranging crimes. Under my leadership, in September 2015, Dr. Zigmond began to detail his and co-conspirators' crimes to federal law enforcement officers in proffer sessions I organized. Sentences ranged from 12 to 180 months in prison. United States District Judge George Caram Steeh presided over this matter.

Co-Counsel
Wayne Pratt
Philip Ross
Linda Aouate
United States Attorney's Office
211 West Fort Street, Suite 2001
Detroit, MI 48226
(313) 226-9100

Opposing Counsel
Ronald W. Chapman, II
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Chapman Law Group
1441 West Long Lake Road, Suite 310
Troy, MI 48098
(248) 644-6326

Maria P. Mannarino
500 Griswold Street, Suite 2450
Detroit, MI 48226
(248) 761-7347

Raymond A. Cassar
Law Offices of Raymond A. Cassar, P.L.C.
30445 Northwestern Highway, Suite 220
Farmington Hills, MI 48334
(248) 855-0911

James J. Hunter
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4000 Town Center, Ninth Floor
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(248) 355-4141

Robert S. Harrison

Robert Harrison & Associates PLC
40950 Woodward Avenue, Suite 100
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(248) 283-1600

Gerald J. Gleeson, II
Miller, Canfield, Paddock & Stone, P.L.C.
840 West Long Lake Road, Suite 150
Troy, MI 48098
(248) 267-3296

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The Cromer Law Group, PLLC
24901 Northwestern Highway, Suite 612
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1300 Broadway Street, Suite 800
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755 West Big Beaver Road, Suite 2100
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Troy, MI 48084
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2450 Guardian Building
500 Griswold Street, Suite 2450
Detroit, MI 48226
(313) 967-0200

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189 West Clarkston Road, Suite 6
Lake Orion, MI 48362
(248) 830-1044

Michael J. McCarthy
Michael J. McCarthy, P.C.
26001 Five Mile Road

Redford, MI 48239
(313) 535-1300

Colin A. Daniels
Neil S. Rockind
Neil Rockind, P.C.
36400 Woodward Avenue, Suite 210
Bloomfield Hills, MI 48304
(248) 208-3800

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 prosecutor and litigator, in addition to trials, I handled hundreds of cases at every stage of civil and criminal litigation from inception to post-judgment. I briefed and argued dozens of civil and criminal dispositive and non-dispositive motions including motions to dismiss, suppress, compel, quash, and obtain summary judgment. I took multiple depositions and engaged in extensive discovery practice. I led substantial investigations, which included extensive interviews of civilian and incarcerated witnesses, factfinding, and recommendations, including in cases spanning multiple states and countries. I also was involved in multiple complex matters, including but not limited to criminal civil rights investigations and wide-ranging fraud and assaultive criminal investigations. From 2016 to 2021, I managed a revolving criminal caseload of approximately 50 criminal cases. I led the Southern District of Ohio's Project Safe Neighborhoods initiative in Columbus, Cincinnati, and Dayton to decrease federal gun crimes, implement anti-violence initiatives, and support community organizations. Prior to instituting a federal, county, and city anti-domestic violence initiative to remove firearms from individuals who illegally possessed firearms after harming intimate partners, I consulted with community organizations that specialize in supportive services for domestic violence survivors and anti-domestic violence legal experts.

I have supported community organizations, including End the Violence, an initiative founded by a formerly incarcerated individual that provides safe spaces for kids to enjoy sports and games and gives advice to help them avoid criminal involvement. It also provides counseling and job referrals for youth and young adults to obtain gainful employment. I have sought to demystify the legal system for teenagers and adults by participating in talks explaining the jury system and unique procedures in federal court. As a member of the Federal Bar Association's National Law Clerk Committee, over the past year, I have assisted in planning and executing a series of webinars to expand the range of individuals who consider pursuing a federal clerkship. The webinars feature federal judges and practitioners describing and explaining the processes to apply for and

secure a clerkship. Hundreds of individuals have attended the webinars.

Additionally, as a magistrate judge I preside over naturalization ceremonies nearly each month, swearing in new citizens. I speak with our court's interns about the work that federal magistrate judges do and discuss my path to law school and past legal practice.

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.

The only cases that might be likely to present potential conflicts of interest would be those involving litigants or witnesses with whom I interacted in my capacity as an Assistant United States Attorney. In such cases, I would review and follow the guidance in the Code of Conduct for United States Judges in determining whether recusal is appropriate, as well as complying with 28 U.S.C. § 455 by disqualifying myself in specific circumstances commanded by the statute and in any case where my impartiality might reasonably be questioned. If I determined that recusal was required, I would return the case to the Clerk's Office for reassignment to another judge.

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

If confirmed as a district judge, I would continue to resolve any potential conflict of interest by adhering to Canon 3 of the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any and all other laws, rules, and practices governing such circumstances. I will also utilize the same internal system that my district uses to screen cases for potential recusal.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a magistrate judge, although I am not permitted to represent clients in any capacity, I routinely contribute my time to demystifying the federal courts for law students, youth, and the public. I frequently promote diversity in the legal profession in conjunction with court initiatives and bar associations and have sought to diversify the ranks of federal law clerks for several years and I continue to do so.

In private practice, I engaged in pro bono work by conducting client intake at Cabrini Green Legal Aid Clinic, where I explained the work of the clinic and the parameters of representation and documented potential clients' cases and background. As a law firm associate, I also represented incarcerated individuals who challenged their conditions of confinement. For example, in *Taylor v. Monahan*, No.1:04-cv-06814 (N.D. Ill.), I assisted in representing two individuals who alleged that they suffered racially discriminatory discipline for behavioral infractions while incarcerated. I helped negotiate settlement agreements for both of my clients. I also tutored four separate classes in bar exam preparation and 99% of my students passed the bar exam on their first attempt. Nearly all students were first generation college graduates.

In addition, I have served as a mentor for more than 15 years to economically disadvantaged youth and continue to do so.

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.

There is a selection committee in the Eastern District of Michigan which reviews applicants for federal district court positions, interviews applicants, and recommends potential nominees to Michigan's Senators.

On March 8, 2022, I applied for consideration for the vacancy in the United States District Court for the Eastern District of Michigan. On April 13, 2022, I interviewed with the judicial selection committee established by Senator Debbie Stabenow and Senator Gary Peters. On May 26, 2022, officials from the White House Counsel's Office informed me that Senators Stabenow and Peters recommended me for potential nomination and invited me to interview. On May 31, 2022, I interviewed with officials from the White House Counsel's Office. Since June 11, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2022, 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).

   Julia Eleanor Kobick

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

   United States District Judge for the District of Massachusetts.

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office of the Massachusetts Attorney General
   1 Ashburton Place, 20th Floor
   Boston, Massachusetts 02108

   I currently reside in Cambridge, Massachusetts.

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

   1983; Boston, Massachusetts.

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.

   2008 – 2010, Harvard Law School; J.D, *magna cum laude*, 2010

   2007 – 2008, Boston College Law School; no degree received

   2005 – 2007, Pace University; M.S., 2007

   2001 – 2005, Harvard College; A.B., *cum laude*, 2005

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

2013 – present
Office of the Massachusetts Attorney General
1 Ashburton Place, 20th Floor
Boston, Massachusetts 02108
Deputy State Solicitor (2021 – present)
Assistant Attorney General (2013 – 2021)

2012 – 2013
Honorable Ruth Bader Ginsburg
Supreme Court of the United States
1 First Street, Northeast
Washington, DC 20543
Law Clerk

2011 – 2012
Honorable Michael A. Chagares
United States Court of Appeals for the Third Circuit
Frank R. Lautenberg Post Office and Courthouse
2 Federal Square, Room 357
Newark, New Jersey 07102
Law Clerk

2010 – 2011
Honorable F. Dennis Saylor IV
United States District Court for the District of Massachusetts
Donohue Federal Building
595 Main Street
Worcester, Massachusetts 01608
Law Clerk

2009 – 2010
Professor Jon Hanson
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant

Summer 2009
Hogan & Hartson LLP (now Hogan Lovells US LLP)
Columbia Square
555 13th Street, Northwest
Washington, DC 20004
Summer Associate

Spring 2009

City of Boston Law Department
1 City Hall Square
Boston, Massachusetts 02201
Intern

Fall 2008
Professor Tomiko Brown-Nagin
Harvard Law School
Dean, Radcliffe Institute for Advanced Study
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant

Summer 2008
Office of the Governor's Legal Counsel
Massachusetts State House
24 Beacon Street
Boston, Massachusetts 02133
Summer Intern

2007 – 2011
Cabot House, Harvard University
60 Linnaean Street
Cambridge, Massachusetts 02138
Resident Tutor

Summer 2006
Hunt Alternatives Fund: Institute for Inclusive Security
625 Mount Auburn Street
Cambridge, Massachusetts 02138
Summer Intern

2005 – 2007
New York City Department of Education
P.S. 86, Kingsbridge Heights Elementary School
2756 Reservoir Avenue
Bronx, New York 10468
Second and Third Grade Teacher

2005 – 2007
Teach for America
25 Broadway, 12th Floor
New York, New York 1004
Corps Member

Other Affiliations (Uncompensated)

2019 – present
Tween Decks Association, Inc.
Elisabeth Doucett, registered agent
6 Ledgewood Drive
Brunswick, Maine 04011
Treasurer

2015 – present
Rappaport Center for Law and Public Policy
Boston College Law School
Barat House
885 Centre Street
Newton, Massachusetts 02459
Member, Board of Directors

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

   I did not serve in the military. I was not required to register for the selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Attorney General Elliot L. Richardson Award for Excellence (2019)

   Massachusetts Lawyers Weekly, Excellence in Law: Up and Coming Attorneys Award (2016)

   Degree from Harvard Law School conferred *magna cum laude* (2010)

   Rappaport Fellowship in Law and Public Policy (2008)

   Boston College Law School Alumni Scholarship (2007)

   Degree from Harvard College conferred *cum laude* (2005)

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.

   The Appellate Project, Mentor (2020 – present)

Boston Bar Association (2014 – present)

Women's Bar Association (2014 – present)

10. **Bar and Court Admission**:

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

Massachusetts, 2011

There have been no lapses in membership.

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

Supreme Court of the United States, 2015
United States Court of Appeals for the First Circuit, 2014
United States District Court for the District of Massachusetts, 2013

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.

Rappaport Center for Law and Public Policy, member of the Board of Directors (2015 – 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 in my response to Question 11a 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 R. Quinan, *Judicial Review of Agency Interpretations of Law*, LexisNexis® Practice Guide: Massachusetts Administrative Law and Practice § 4.04 (Randazzo & Hitt, eds. 2017). Copy supplied.

Note, *Discriminatory Intent Reconsidered: Folk Concepts of Intentionality and Equal Protection Jurisprudence*, 45 Harv. C.R.-C.L. L. Rev. 517 (2010). Copy supplied.

Negotiated Rulemaking: The Next Step in Regulatory Innovation at the Food and Drug Administration?, 65 Food & Drug L.J. 425 (2010). Copy supplied.

With J. Knobe, *How Research on Folk Judgments of Intentionality Can Inform Statutory Interpretation*, 75 Brook. L. Rev. 409 (2009). Copy supplied.

Let's Go Greece (2005). 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.

Listed below are annual reports issued by the Rappaport Center for Law and Public Policy during my time on the Board of Directors. The Rappaport Center's staff produces the annual report to update donors and supporters about the work of the Center. Each annual report lists the organization's Board of Directors by name and thus my name is on reports that were issued during my board service. I did not draft, review, or edit these reports before they were sent.

"2020–2021 Annual Impact Report," The Rappaport Center for Law and Public Policy. Copy supplied.

"2019–2020 Annual Impact Report," The Rappaport Center for Law and Public Policy. Copy supplied.

"2018–2019 Annual Report," The Rappaport Center for Law and Public Policy. Copy supplied.

"2017–2018 Annual Impact Report," The Rappaport Center for Law and Public Policy. Copy supplied.

"2016–2017 Annual Report," The Rappaport Center for Law and Public Policy. Copy supplied.

"2015–2016 Annual Report," The Rappaport Center for Law and Public Policy. Copy supplied.

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

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

To the best of my recollection, and after searching my files and the internet, I have participated in panel discussions or given remarks at the following public events:

May 20, 2022: Speaker, The Presentation of the Portrait of The Honorable F. Dennis Saylor IV to the United States District Court, Boston, Massachusetts. Notes supplied.

November 17, 2021: Panelist, 2021 Women in Litigation Joint CLE Conference, ABA Litigation Section, American Bar Association, *A Tribute to Ruth Bader Ginsburg*, Boston, Massachusetts. Outline supplied.

July 28, 2021: Panelist, Section 8 Alumni Panel, Harvard Law School, Cambridge, Massachusetts. I participated in a panel discussion of Harvard Law

School alumni about our professional backgrounds and our experience as transfer students at the law school. I have no notes, transcript, or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

March 10, 2021: Guest Lecturer, *Who Should Decide? Executive and Legislative Power in a Pandemic*, Seminar in Law and Public Policy, Boston College Law School, Newton Centre, Massachusetts. Outline and notes supplied.

July 1, 2020: Presenter of Opening Remarks, Rappaport Center for Law and Public Policy, *COVID-19 and Federalism: Opportunities and Challenges*, Newton Centre, Massachusetts. Video available at https://www.youtube.com/watch?v=XhFKN2UIDEM.

February 13, 2018: Presenter of Opening Remarks, Rappaport Center for Law and Public Policy, *Campaign Finance*, Newton Centre, Massachusetts. Remarks supplied.

June 16, 2016: Panelist, Harvard Law School Office of Public Interest Advising, Harvard Law School Summer Speaker Series 2016, Cambridge, Massachusetts. I gave remarks focused on my career path and on my advice for students who intend to pursue public interest law. I have no notes, transcript, or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

June 1, 2016: Presenter, Rappaport Center for Law and Public Policy, Discussion with Summer Fellows on Government Lawyering, Boston, Massachusetts. Notes supplied.

April 26, 2016: Panelist, American Constitution Society, *The New Supreme Court: What Lies Ahead and How to Get There*, Boston, Massachusetts. The panel focused on potential changes at the Supreme Court after Justice Scalia's passing. I have no notes, transcript, or recording. The address for the American Constitution Society is 1899 L Street, Northwest, Suite 200, Washington, DC 20036.

October 29, 2014: Panelist, All About Clerkships for Public Interest Careers, Harvard Women's Law Association Public Interest Committee, Harvard Law School, Cambridge, Massachusetts. I spoke to law students as part of a panel of alumni who had completed clerkships and were working in public interest jobs. I have no notes, transcript, or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

July 9, 2014, Presenter, Rappaport Center for Law and Public Policy, Discussion with Summer Fellows on the Inner Workings of the Supreme Court, Boston, Massachusetts. I gave an overview of the Supreme Court's practices and

procedures. I have no notes, transcript, or recording. The address for the Rappaport Center is Boston College Law School, 885 Centre Street, Newton Centre, Massachusetts 02459.

February 14, 2014: Presenter, Social Law Library, Researching, Interpreting, Applying, and Challenging Regulations in Massachusetts, Boston, Massachusetts. Presentation and notes supplied.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

K. Griffin, *"She Changed the World": Justice Ruth Bader Ginsburg, Landmark Jurist, Dies at 87*, The Harvard Crimson (Sept. 21, 2020). Copy supplied.

Interview with Quincy Walters of WBUR (Sept. 19, 2020). I am unable to locate a transcript or recording.

Excellence in the Law 2016, Massachusetts Lawyers Weekly (Apr. 4, 2016). Copy supplied.

Students Work to Make a Difference, Cambridge Chronicle (Aug. 19, 2008). Copy supplied.

K. Jobson, *The Institute of Prima Donnas*, The Harvard Crimson (Apr. 10, 2003). Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

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

i. Of these cases, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

ii. Of these cases, approximately what percent were:

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you

recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held office or any official position in a political party or election committee. I have volunteered for a few political campaigns. To the best of my recollection, those include:

2004: John Kerry for President. On one occasion, I volunteered to knock on doors and hold signs for the campaign.

2014: Eric Lesser for Massachusetts State Senate. On one occasion, I volunteered to knock on doors for this campaign.

2018: Chris Pappas for Congress. On one occasion, I volunteered to knock on doors for this campaign.

2020: Elizabeth Warren for President. On one occasion, I volunteered to knock on doors for this campaign.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 2010 to 2011, I served as a law clerk to the Honorable F. Dennis Saylor IV, United States District Court for the District of Massachusetts.

From 2011 to 2012, I served as a law clerk to the Honorable Michael A. Chagares, United States Court of Appeals for the Third Circuit.

From 2012 to 2013, I served as a law clerk to the Honorable Ruth Bader Ginsburg, Supreme Court of the United States.

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;

2013 – present
Office of the Massachusetts Attorney General
1 Ashburton Place, 20th Floor
Boston, Massachusetts 02108
Deputy State Solicitor (2021 – present)
Assistant Attorney General (2013 – 2021)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

I began my legal career clerking for judges on the United States District Court for the District of Massachusetts, the United States Court of Appeals for the Third Circuit, and the Supreme Court of the United States. After those clerkships, in 2013, I joined the Office of the Massachusetts Attorney General.

From 2013 to the summer of 2021, when I served as an Assistant Attorney General, my law practice focused on civil litigation. Typically, I handled cases defending state laws, regulations, and agency actions, though I also handled affirmative cases brought by the Commonwealth of Massachusetts. Many of my cases involved constitutional challenges to state laws or challenges to state agency actions under the Massachusetts Administrative Procedure Act. I practiced in trial and appellate courts, federal and state, and my practice spanned a range of substantive areas. Some of those included healthcare; child welfare; administrative law; constitutional issues, such as First Amendment, Second Amendment, and Fourteenth Amendment claims and preemption questions; and proceedings involving various federal statutes, including the Food, Drug, and Cosmetic Act, the Social Security Act, the Magnuson-Stevens Act, the Individuals with Disabilities Education Act, and the Administrative Procedure Act.

In trial court, I led and was a member of teams handling complex litigation, and I handled many cases as sole counsel. My cases typically involved motion practice; I drafted and advised on dozens of dispositive and non-dispositive motions. I examined witnesses, argued motions for interlocutory relief, and argued more than 20 dispositive motions. I led cases through all aspects of discovery, including depositions, document exchange, and exchange of expert reports. I was also a member of a team that tried a civil case in a federal bench trial. In the appellate context, I wrote dozens of party and amicus briefs and presented oral argument in 19 cases.

Since 2021, I have served as Deputy State Solicitor, and my law practice has focused primarily on civil and criminal appellate litigation. I review briefs for and consult on major civil appellate matters in which the Commonwealth or its agencies or officers is a party, as well as major criminal appellate matters handled by the Attorney General's Office. I handle select appellate matters as counsel of record, author and review amicus briefs for the Commonwealth, and review requests by agencies or agency officials to appeal adverse decisions. I also spend a portion of my time working on select matters pending in trial court.

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

My typical clients at the Attorney General's Office have been Massachusetts government agencies, Massachusetts government officials, and the Commonwealth of Massachusetts itself. The government officials I have represented usually are named as defendants in their official capacities, though I have also represented government officials sued in their individual capacities. I have specialized in constitutional and

administrative law but have handled cases involving other substantive areas of law as well.

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.

Nearly all of my practice has been in litigation. I have also spent a small percentage of my time reviewing and providing feedback on draft regulations or legislation and assisting with the Attorney General's initiative petition certification process. From 2013 to 2021, when I was an Assistant Attorney General, I appeared in court frequently. Since 2021, when I transitioned to a job as Deputy State Solicitor, I have appeared in court occasionally.

i. Indicate the percentage of your practice in:
   1. federal courts: 40%
   2. state courts of record: 60%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 97%
   2. criminal proceedings: 3%

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 was a member of a team of five attorneys and two support staff who represented the Attorney General in a civil bench trial in *Alliance for Automotive Innovation v. Healey*, No. 1:20-cv-12090-DPW (D. Mass.), during June and July of 2021. A final decision has not yet issued in the case. Additionally, I have argued more than 20 dispositive motions in trial courts and presented oral argument in 19 appeals.

i. What percentage of these trials were:
   1. jury: 0%
   2. non-jury: 100%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not argued before the Supreme Court of the United States, but I drafted or assisted with drafting the following briefs filed in the Supreme Court:

Morin v. Lyver, No. 21-1160 (brief in opposition to the petition for a writ of certiorari) (currently pending). Copy supplied.

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, 140 S. Ct. 2367 (2020) (amicus brief of Massachusetts et al. in support of respondent, 2020 WL 1875621).

Worman v. Healey, No. 19-404 (brief in opposition to petition for a writ of certiorari, 2019 WL 6715382) (cert. denied).

1A Auto, Inc. v. Sullivan, No. 18-733 (brief in opposition to petition for a writ of certiorari, 2019 WL 1597787; supplemental brief in opposition to petition for a writ of certiorari, 2019 WL 2103455) (cert. denied).

Caetano v. Massachusetts, 136 S. Ct. 1027 (2016) (*per curiam*) (brief in opposition to petition for a writ of certiorari) (granted, vacated, and remanded). 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. *Morin v. Leahy*, 189 F. Supp. 3d 226 (D. Mass. 2016) (Hillman, J.), *aff'd*, 862 F.3d 123 (1st Cir. 2017) (Torruella, Kayatta, Barron, JJ.), and *Morin v. Lyver*, 442 F. Supp. 3d 408 (D. Mass. 2020) (Hillman, J.), *aff'd*, 13 F.4th 101 (1st Cir. 2021) (Barron, Selya, Delgado-Hernández, JJ.), *cert. petn. pending*, No. 21-1160 (U.S.)

I am sole counsel for the Commonwealth of Massachusetts in these related cases against the Commonwealth and the Chief of Police for the Town of Northborough challenging the constitutionality of Mass. Gen. Laws ch. 140, §§ 131(d)(ii)(D) and 131A, which make individuals with weapons-related criminal convictions ineligible for a license to carry and permit to purchase firearms. The plaintiff, who is disqualified under the statutes due to

prior misdemeanor convictions for attempting to carry a pistol without a license and possession of an unregistered firearm, contends that, as applied to him, the laws violate the Second Amendment. In the first lawsuit, I handled the Commonwealth's intervention motion and answer, discovery, summary judgment briefing, and argument on the parties' summary judgment motions. The District Court granted summary judgment in favor of the Commonwealth and Chief of Police. On appeal, I drafted the brief and argued on behalf of the Commonwealth. The First Circuit affirmed, ruling that the denial of the plaintiff's license-to-carry application did not violate the Second Amendment, as the plaintiff had framed the claim, because he had not sought alternative forms of licensure that would have enabled him to possess a gun in his home for self-defense.

After the plaintiff applied for those forms of licensure and was denied in part, due to his convictions, he again filed suit and asserted a Second Amendment claim. In his second lawsuit, I handled the Commonwealth's intervention motion and answer, document exchange, interrogatories, summary judgment briefing, and argument on the parties' summary judgment motions. The District Court entered judgment in favor of the Commonwealth and Chief of Police, upholding the statute as applied under intermediate constitutional scrutiny. The plaintiff appealed. I wrote the brief for the Commonwealth and argued the appeal. The First Circuit affirmed, holding that because the plaintiff could lawfully possess a handgun in his home, and had failed to develop an argument that the restriction on his ability to obtain a handgun should be reviewed under strict scrutiny, he had failed to articulate any basis for questioning the entry of judgment in favor of the Commonwealth. The plaintiff's petition for a writ of certiorari is currently pending in the Supreme Court.

Dates of Representation: 2015 – present

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2. *Alliance for Automotive Innovation v. Healey*, No. 1:20-cv-12090-DPW (D. Mass.) (Woodlock, J.)

The plaintiff, a trade association representing the major U.S. car manufacturers, brought

several constitutional challenges to a ballot initiative known as the 2020 Right to Repair Law, which was approved by the voters in November 2020 and codified at Mass. Gen. Laws ch. 93K. The law generally grants automobile repair shops and car owners greater access to cars' mechanical data. I became involved in the case toward the end of discovery, as the parties were beginning to prepare for bench trial on two claims of conflict preemption. Representing the Attorney General, I worked with a team of attorneys to develop the evidence that would be introduced at trial, plan the trial strategy, and prepare the documents to be filed in connection with the trial. I drafted significant portions of the defendant's proposed findings of fact and conclusions of law and trial memorandum, cross-examined and introduced evidence through one of the plaintiff's witnesses, responded to the plaintiff's proposed findings and conclusions, drafted the defendant's motion for judgment as a matter of law, and strategized with my colleagues throughout the three-day trial in June 2021. After trial, I drafted several additional filings, including the Attorney General's successful motion to reopen the evidence. The trial court has not issued a final decision or judgment in the case.

Dates of Representation: 2021 – 2022

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3. *Worcester Regional Retirement Board v. Public Employee Retirement Admin. Comm'n*, 2021 WL 8015865, No. 2019-00602 (Mass. Super. Ct. Jan. 6, 2021) (Haggan, J.), *aff'd in part and remanded in part*, 489 Mass. 94, 180 N.E.3d 417 (2022) (Budd, C.J., and Gaziano, Lowy, Cypher, Kafker, Wendlandt, Georges, JJ.)

I was sole counsel for the Public Employee Retirement Administration Commission (PERAC) in this case involving the scope of the Commonwealth's retirement laws. The plaintiffs, five local retirement boards, filed suit to challenge an advisory memorandum issued by PERAC, the state agency charged with overseeing Massachusetts's retirement system. The memorandum informed the retirement boards of PERAC's interpretation of *Public Employee Retirement Administration Commission v. Contributory Retirement Appeal Board*, 478 Mass. 832, 180 N.E.3d 517 (2018), also known as the *Vernava* decision. The Supreme Judicial Court held in that case held that accrued sick and vacation pay taken in conjunction with workers' compensation benefits constitutes "regular compensation" under Mass. Gen. Laws ch. 32, § 1, for purposes of calculating an employee's effective date of retirement under the statute governing accidental disability retirement. I defended PERAC's position that the SJC's construction of the term "regular compensation" in *Vernava* did not also apply to calculations made under different statutes, such as those governing superannuation and ordinary disability retirement. Before the Superior Court, I briefed and argued PERAC's cross-motion for judgment on the pleadings and opposition to the plaintiffs' motion for judgment on the pleadings. The Superior Court granted judgment in part for the plaintiffs, ruling that the SJC's construction of "regular compensation" in *Vernava* applied to uses of the phrase "regular compensation" in statutes other than the accidental disability retirement statute, and granted judgment in part for PERAC, rejecting the plaintiffs' separate claim seeking a declaration that the retirement boards had independent authority to interpret the retirement laws and thus were not subject to PERAC's memorandum.

The parties cross-appealed and the SJC granted PERAC's application for direct appellate review. I wrote PERAC's opening brief and reply brief and argued the appeal in the SJC. The SJC largely affirmed, agreeing with the Superior Court that its construction of "regular compensation" in *Vernava* applied to statutes other than the accidental disability retirement statute, and ruling, with respect to the plaintiffs' separate request for declaratory relief, that the plaintiffs had failed to establish an "actual controversy" adequate to invoke the court's jurisdiction.

Dates of Representation: 2019 – 2022

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4. *In the Matter of the Pecce Supplemental Needs Trust*, 99 Mass. App. Ct. 376, 167 N.E.3d 429 (2021) (Englander, Desmond, JJ.; Rubin, J., dissenting), *application for further appellate review denied*, SJC No. FAR-28213

This case involved a special needs trust created by the settlor for his daughter, who had received benefits from the Commonwealth's Medicaid agency, MassHealth, throughout her adult life. The trust included a "payback provision" that, upon the daughter's death, required reimbursement to MassHealth for the benefits paid for her care. The settlor also drafted a will that required his assets to transfer to the trust upon his death. After the settlor and his daughter passed away, the appellant, who had become the trustee of the trust and personal representative of the settlor's estate, sought to have the trust reformed to eliminate the payback provision in favor of MassHealth. He contended that the settlor's inclusion of the provision was a mistake premised on a misunderstanding of state and federal Medicaid statutes and regulations. If the petition to reform were granted, the appellant would have been entitled to all of the assets in the trust, including the assets that transferred to the trust upon the settlor's death.

Following a trial, the Probate and Family Court denied the appellant's petition to reform. I became involved in the case on appeal and, as counsel for MassHealth, wrote the brief and presented oral argument. Over a dissent, the Appeals Court affirmed in part and vacated in part. It held that the Probate Court had correctly denied the petition to reform with respect to the assets transferred into the trust before the settlor's death. But it ruled that the petition to reform should have been granted with respect to the assets transferred from the estate to the trust after the settlor's death. The appellant filed an application for further appellate review with the Supreme Judicial Court. I authored MassHealth's opposition to that application, and the Supreme Judicial Court denied further appellate review.

Dates of Representation: 2020 – 2021

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5. *Worman v. Healey*, 293 F. Supp. 3d 251 (D. Mass. 2018) (Young, J.), *aff'd*, 922 F.3d 26 (1st Cir. 2019) (Barron, Souter, Selya, JJ.), *cert. denied*, 141 S. Ct. 109 (2020)

I was lead counsel for the defendants in this lawsuit challenging the constitutionality of the Commonwealth's statutory ban on the possession and sale of assault weapons and large-capacity magazines. Among other things, I handled the preliminary motions, developed and compiled the record supporting the lawfulness of the challenged statute, worked with the team to compile expert reports and manage document discovery, and took a deposition. I wrote the briefs in support of the defendants' motion for summary

judgment and in opposition to the plaintiffs' cross-motion for summary judgment, and I argued the summary judgment hearing. Before the District Court issued its decision on summary judgment, I worked with the team to prepare the pre-trial memorandum.

The District Court granted the defendants' motion for summary judgment and denied the plaintiffs' motion. It held (1) that the statute comports with the Second Amendment because assault weapons and large-capacity magazines fall outside the scope of the Second Amendment, (2) that the phrase "copies or duplicates" in the statute is not unconstitutionally vague, (3) and that a due process challenge to the Attorney General's enforcement notice interpreting the statute was not ripe for review. The plaintiffs appealed only the portion of the decision rejecting their Second Amendment claim. I wrote the brief for the government defendants and argued the appeal. The First Circuit affirmed, upholding the statute under intermediate scrutiny as substantially related to the Commonwealth's important interests in promoting public safety and preventing crime. After the plaintiffs sought review by the Supreme Court, I wrote the brief in opposition to their petition for a writ of certiorari. The Supreme Court denied review.

Dates of Representation: 2017 – 2020

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6. *1A Auto, Inc. v. Sullivan*, No. 15-00494, 2017 WL 8727129 (Mass. Super. Ct. Sept. 18, 2017) (Wilson, J.), *aff'd*, *1A Auto, Inc. v. Director of the Office of Campaign & Political Finance*, 480 Mass. 423, 105 N.E.3d 1175 (2018) (Gants, C.J., and Lenk, Gaziano, Lowy, Budd, Cypher, Kafker, JJ.), *cert. denied*, 139 S. Ct. 2613 (2019)

The plaintiffs asserted First Amendment and equal protection challenges to Mass. Gen. Laws ch. 55, § 8, which bars business corporations in Massachusetts from making campaign contributions to candidates for state office. I became involved in the case after the Superior Court had denied the plaintiffs' motion for a preliminary injunction. Representing the Director of the Office of Campaign and Political Finance as lead counsel, I handled discovery, including document exchange and interrogatories; compiled the record supporting the constitutionality of the statute; and authored the summary judgment brief. The Superior Court granted judgment in favor of the Director. After the Supreme Judicial Court granted direct appellate review of the plaintiffs' appeal, I wrote the brief and presented oral argument. The Supreme Judicial Court affirmed. It held that the Supreme Court's decision in *FEC v. Beaumont*, 539 U.S. 146 (2003), which upheld the federal counterpart to Massachusetts's bar on corporate campaign contributions, remained good law after *Citizens United v. FEC*, 558 U.S. 310 (2010). Reviewing the plaintiffs' First Amendment claim under the same standard applied in *Beaumont*, the SJC held that Massachusetts's bar on corporate contributions is closely drawn to the Commonwealth's important interests in preventing quid pro quo corruption and the appearance of such corruption, and that the law is neither overinclusive nor underinclusive. The court also rejected the plaintiffs' claim that the statute's application to corporations, but not non-profit organizations and labor unions, violated equal

protection. The claim must be evaluated under the "closely drawn" standard of review rather than strict scrutiny, the SJC held, and it failed under that standard. The plaintiffs filed a petition for a writ of certiorari. I wrote the brief in opposition, and the Supreme Court denied review.

Dates of Representation: 2015 – 2019

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7. *Vapor Technology Ass'n v. Baker*, No. 1:19-cv-12048-IT (D. Mass. 2019) (Talwani, J.), and *Vapor Technology Ass'n v. Baker*, No. 1984CV03102-B, 2019 WL 6050041 (Mass. Super. Ct. Oct. 21, 2019) (Wilkins, J.), *vacated by Vapor Technology Ass'n v. Baker*, SJC-12834, 2019 WL 9048858 (Dec. 26, 2019)

In these related cases, I served as co-lead counsel for the Governor and the Commissioner of the Department of Public Health in the defense of the Commissioner's emergency order that temporarily banned the sale of vaping products in Massachusetts. The Commissioner issued the emergency order following the outbreak of a severe lung disease associated with the use of vaping products. In the federal case, I was the principal author of the brief in opposition to the plaintiffs' motion for a temporary restraining order and preliminary injunction, and I argued the hearing on that motion.

The District Court denied the motion for a temporary restraining order and set a further hearing on the motion for a preliminary injunction. The plaintiffs later withdrew their request for preliminary injunctive relief and voluntarily dismissed their claims.

In the state case, the Superior Court held a series of hearings on motions for preliminary injunctive relief filed by the plaintiffs, led by a trade association representing nicotine product retailers, and the plaintiff-intervenors, a group of individuals who used medical marijuana vaping products. I presented argument for the defendants in several of the hearings and authored several of the briefs opposing the motions. I also cross-examined a witness, assisted in preparation for direct and cross-examination of other fact and expert witnesses, and compiled affidavits and documents supporting the Commissioner's order. In two initial orders, the Superior Court granted the plaintiffs' request for preliminary injunctive relief but gave the Commissioner time to promulgate the emergency order as emergency regulations. After the Department of Public Health did just that, the Superior Court rejected the plaintiffs' further request for preliminary injunctive relief as to the emergency regulations but granted the plaintiff-intervenors' request for emergency relief. A single justice of the Massachusetts Appeals Court denied the defendants' motion to stay the Superior Court's first two orders. The Supreme Judicial Court then sua sponte transferred appeals of all four orders to its docket. I co-authored the defendants' briefs before the SJC. Before oral argument, the Legislature enacted Mass. St. 2019, ch. 133, *An Act Modernizing Tobacco Control*, prompting the Governor to terminate the declared emergency and the Commissioner to rescind the emergency regulations. In accord with its practice on disputes that become moot on appeal, the SJC dismissed the appeals and vacated all of the Superior Court's decisions and orders.

Dates of Representation: 2019

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8. *Massachusetts Automatic Merchandising Council, Inc. v. Comm'r of Public Health*, No. 2015-00281, 2016 WL8189064 (Suffolk Sup. Ct. June 1, 2016) (Ullmann, J.), *aff'd*, 91 Mass. App. Ct. 1128, 2017 WL 2562489 (2017) (Rule 1:28 decision) (Green, Hanlon, Kinder, JJ.)

The plaintiffs, a vending machine operator and a trade association, challenged a regulation promulgated by the Department of Public Health and the Executive Office for Administration and Finance that, in response to new statutory mandates, increased the annual vending machine inspection and licensing fee from $3 to $10. The plaintiffs contended that the $10 exactment was not a fee, but instead was an unlawful tax. Shortly after I took over the case as sole counsel for the state agencies, the plaintiffs moved for a preliminary injunction. I wrote the brief in opposition to that motion and argued the hearing. The Superior Court denied the motion. I also wrote the memorandum supporting the defendants' cross-motion for summary judgment and opposing the plaintiffs' motion for summary judgment, compiled evidence to support the defendants' cross-motion, drafted the statement of material facts required by court rules, and argued the summary judgment hearing. The Superior Court granted the defendants' motion, concluding that the regulation exhibited characteristics of a fee, not a tax. The plaintiffs appealed, and I argued the appeal on behalf of the defendant agencies. The Appeals Court affirmed, agreeing with the Superior Court that because the $10 exactment was reasonably designed to compensate the Department of Public Health for its anticipated regulatory expenses and provided a particularized benefit to vending machine operators, it was a valid fee, not an unlawful tax.

Dates of Representation: 2015 – 2017

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9. *In re G.P.*, 473 Mass. 112, 40 N.E.3d 989 (2015) (Gants, C.J., and Spina, Cordy, Botsford, Duffly, Lenk, Hines, JJ.)

I served as sole counsel for the New Bedford District Court in this appeal concerning the Uniform Trial Court Rules for civil commitment proceedings under Mass. Gen. Laws ch. 123, § 35. Section 35 authorizes the temporary commitment of individuals with substance or alcohol abuse disorder who pose a substantial risk of harm to themselves or others. The case, which was originally filed in the Supreme Judicial Court for Suffolk County, was reserved and reported to the full Supreme Judicial Court. I wrote the brief and presented oral argument on behalf of the District Court, which had ordered the plaintiff's commitment for substance abuse disorder. The Supreme Judicial Court upheld the Uniform Trial Court Rules and agreed with the District Court's position that (1) a clear and convincing evidence standard of proof in civil commitment proceedings under section 35 is consistent with due process; (2) due process does not require strict adherence to the rules of evidence in section 35 proceedings, because the Uniform Trial Court Rules provide procedural protections appropriate to the nature of such proceedings; (3) the Uniform Trial Court Rules provide an appropriate appellate remedy; (4) evidence of past conduct establishing a "likelihood of serious harm," necessary for commitment under section 35, need not be temporally proximate to the commitment; and (5) the "very substantial risk" of harm prong of the "likelihood of serious harm" standard in Mass. Gen. Laws ch. 123, § 1, focuses on the risk of physical impairment or injury. The court also held that the risk of harm must be imminent before a person may be committed pursuant to section 35.

Dates of Representation: 2015 – 2016

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10. *Caesars Massachusetts Management Co., LLC v. Crosby*, No. 13-cv-13144-NMG, 2014 WL 2468689 (D. Mass. 2014) (Gorton, J.), *aff'd*, 778 F.3d 327 (1st Cir. 2015) (Lynch, C.J., and Souter, Selya, JJ.)

I represented the Chairman of the Massachusetts Gaming Commission and the Director of the Commission's Investigations and Enforcement Bureau in this lawsuit brought by the former business partners of an applicant for a license to operate a casino. After an investigation, the Director had determined, under Mass. Gen. Laws ch. 23K, §§ 12-14, that the plaintiff businesses were not "suitable" and therefore could not partner with the license applicant. I drafted the briefs supporting the defendants' motion to dismiss and motion to stay discovery obligations pending a ruling on the motion to dismiss. I also assisted in the defendants' preparations for discovery. The District Court granted the defendants' motion to dismiss, holding that the plaintiffs' official-capacity claims were barred by the Commonwealth's Eleventh Amendment immunity and that their individual-capacity claims were barred under the doctrine of qualified immunity. On appeal, I assisted in drafting the merits brief. The First Circuit affirmed. It determined that the plaintiffs' due process claims failed as a matter of law because the plaintiffs had not adequately alleged a protected property interest, and that their equal protection claim failed because, given the discretion afforded state officials under the Massachusetts Gaming Act, no class-of-one equal protection claim was cognizable as matter of law.

Dates of Representation: 2013 – 2015

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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.)

My legal practice has largely consisted of civil litigation in trial and appellate courts. I often serve as lead or sole counsel in my cases. In trial courts, I, along with my team, have determined the legal strategy for the cases and handled pleadings, pretrial motion practice, and dispositive motion practice. I have also handled discovery, including document exchange, interrogatories, depositions, and expert witnesses. I have tried one case and examined witnesses at trial and evidentiary hearings. I have written dozens of briefs, argued more than 20 dispositive motions, and argued a wide range of non-dispositive motions. In appellate courts, I have briefed 26 cases, serving as lead counsel in 21 and presenting oral argument in 19. As Deputy State Solicitor, I have reviewed and consulted on many briefs in criminal and civil matters pending in state and federal appellate courts, and I have reviewed and advised the Attorney General on requests to appeal adverse rulings in criminal and civil cases.

In general, the two main categories of cases I have handled involve constitutional challenges to state statutes and regulations, and challenges to administrative agency decisions under the Massachusetts Administrative Procedure Act or the Declaratory Judgment Act. Cases in the former category usually have been resolved at the motion to dismiss stage or on motions for summary judgment. Cases in the latter category typically have been resolved on cross-motions for judgment on the pleadings. In both types of cases, questions of statutory construction, jurisdictional questions, and questions about the scope of agency authority arise frequently.

A small portion of my practice has involved reviewing draft legislation, draft regulations, or draft orders for lawfulness or to advise clients regarding possible legal challenges. I have served as a supervisor to other attorneys and, in that capacity, provided them with advice on legal strategy, reviewed their briefs, and observed and provided feedback on their arguments.

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 have not previously taught a course at a college or law school.

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

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    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.

The most likely area of conflict would involve cases I handled or supervised while at the Massachusetts Attorney General's Office, or cases in which I expressed an opinion regarding the merits of the controversy. I would disqualify myself in such cases, consistent with 28 U.S.C. § 455(b)(3). A conflict may also arise if a family member, close friend, or my husband's employer were a party to or had an interest in a case. I would evaluate any such potential conflict under the applicable rules.

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

I would resolve any actual or potential conflict of interest under the standards set forth in 28 U.S.C. § 455 and Canon 3C of the Code of Conduct for United States Judges. I would also consult any applicable judicial decisions, policies, or advisory opinions published by the Judicial Conference. Where a question of conflict is close, I would err on the side of disqualification.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My primary contribution to the public interest has been through my work at the Massachusetts Attorney General's Office, an institution whose mission is to serve the residents of Massachusetts. While lawyers at the Attorney General's Office may not provide pro bono representation, many of my cases have directly advanced the interests of individuals who have experienced hardship or disadvantage. I am part of the team seeking a declaratory judgment that two ride share companies, Uber and Lyft, have misclassified their drivers as independent contractors, thus depriving those low-wage workers of the protections of Massachusetts's laws guaranteeing minimum wage and overtime pay, timely payment of all earned wages, earned sick leave, and anti-retaliation protections. I have handled cases involving the suspension or revocation of licenses of physicians whose conduct was harmful to patients suffering from substance abuse disorder. I have handled five termination of parental rights appeals that brought permanency to children who were abused or neglected by their parents. In each case, the Massachusetts Appeals Court affirmed the determination that the parents were unfit, rulings that brought the children closer to moving out of foster homes and into permanent adoptive homes.

I have also devoted significant time to mentorship. For the past seven summers, I have been a mentor to law students through the Rappaport Center for Law and Public Policy's

summer fellowship program. And for the past two years, I have served as a mentor with The Appellate Project, an organization that matches attorneys with law students of color interested in appellate advocacy. Within the Attorney General's Office, I cultivate relationships with the fellows and interns, and I served for a year on the Government Bureau's Racial Equity Working Group.

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.

Massachusetts has a judicial selection commission. Senators Elizabeth Warren and Edward Markey convened the Advisory Committee on Massachusetts Judicial Nominations to screen and interview candidates, and the Advisory Committee provided the Senators with a list of candidates recommended for the position. I submitted my initial application to the Advisory Committee on January 20, 2021, and I was interviewed on February 4, 2021. On March 31, 2022, after the Advisory Committee had announced it was soliciting additional applications, I re-submitted my application materials. I interviewed again with the Advisory Committee on April 14, 2022.

On April 25, 2022, I interviewed with Senator Warren and Senator Markey and four members of their staffs. I then interviewed with attorneys from the White House Counsel's Office on May 2, 2022. Since May 10, 2022, I have been in contact with attorneys from the Office of Legal Policy at the Department of Justice. On August 1, 2022, 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).

   Rita Faye Lin

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

   United States District Judge for the Northern District of California

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.

   San Francisco Superior Court
   Hall of Justice
   850 Bryant Street
   San Francisco, California 94103

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

   1978; Oakland, California

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

   2000 – 2003, Harvard Law School; J.D., *magna cum laude*, 2003

   1996 – 2000, Harvard College: B.A., Social Studies, *magna cum laude*, 2000

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
   San Francisco Superior Court
   Hall of Justice
   850 Bryant Street

San Francisco, California 94103
Superior Court Judge

2021
University of California Hastings College of Law
200 McAllister Street
San Francisco, California 94102
Adjunct Professor

2014 – 2018
United States Attorney's Office
Northern District of California
450 Golden Gate Avenue, 11th floor
San Francisco, California 94102
Assistant United States Attorney

2004 – 2014
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
Partner (2013 – 2014)
Associate (2004 – 2012)

2003 – 2004
United States Court of Appeals for the First Circuit
Honorable Sandra Lynch
One Courthouse Way
Boston, Massachusetts 02210
Judicial Law Clerk

2003
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
Summer Associate

2002
Department of Justice
Antitrust Division
Transportation, Energy, and Agriculture Section
Suite 8000, Liberty Square Building
450 Fifth Street, Northwest
Washington, DC 20530
Summer Honors Intern

2002

Williams & Connolly LLP
725 Twelfth Street, Northwest
Washington, DC 20005
Summer Associate

2001
Hale and Dorr LLP
(now Wilmer Hale LLP)
60 State Street
Boston, Massachusetts 02109
Summer Associate

Other Affiliations (uncompensated):

2013 – 2014
Bay Area Legal Aid
1735 Telegraph Avenue
Oakland, California 94612
Board Member

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

   I did not serve in the military. I was not required to register for the selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   National Asian Pacific American Bar Association, Best Lawyers Under 40 (2017)

   Leadership Council on Legal Diversity, Fellow (2014)

   Euromoney, Litigation Rising Stars Finalist (2013)

   Daily Journal, Top 100 Women Attorneys in California (2012)

   The Recorder, 50 Attorneys on the Fast Track (2012)

   Bay Area Lawyers for Individual Freedom, Legal Service Award (2012)

   Ames Moot Court Competition, Best Brief in Finals, Best Oralist in Semifinals (2002)

   John M. Olin Scholarship in Law and Economics (2002)

John Harvard Scholarship (1999)

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

Asian American Bar Association of the Greater Bay Area (2005 – present)
Judiciary Committee Co-Chair (2017)
Judiciary Committee Mentorship Chair (2016)
Judiciary Committee member (2014 – 2016)

Association of Business Trial Lawyers, Northern California (2005 – 2014)

Bar Association of San Francisco (2017 – present)

California Asian Pacific American Judges Association (2018 – present)

California Judges Association (2018 – present)
Criminal Law Committee (2022 – present)

Morrison & Foerster Women's Initiative Committee (2011 – 2014)

Morrison & Foerster Working Mother's Affinity Group (2010 – 2014)
Co-Chair (2010 – 2012)

Harvard Law School Association of Northern California (2004 – present)

National Asian Pacific American Bar Association (2005 – present)

San Francisco Bank Attorneys' Association (2005 – 2014)

San Francisco Superior Court (2018 – present)
Executive Committee (2022 – present)
Adult Probation Committee (2021 – present)
Pretrial and Bail Committee (2019 – 2020)

State Bar of California, Consumer Financial Services Committee (2010 – 2014)
Chair (2013 – 2014)
Vice-Chair (2012 – 2013)

State Bar of California, Financial Institutions Committee (2010 – 2012)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in

membership. Please explain the reason for any lapse in membership.

California, 2005

In California, judges are not considered members of the state bar. There have been no lapses in membership.

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

Supreme Court of the United States (2012)
United States Court of Appeals for the Fourth Circuit (2014)
United States Court of Appeals for the Sixth Circuit (2014)
United States Court of Appeals for the Ninth Circuit (2005)
United States Court of Appeals for the Tenth Circuit (2014)
United States Court of Appeals for the Eleventh Circuit (2011)
United States District Court for the Central District of California (2005)
United States District Court for the Eastern District of California (2005)
United States District Court for the Northern District of California (2005)
United States District Court for the Southern District of California (2005)

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.

826 Valencia, Tenderloin Community Center (2017 – 2018)
Volunteer tutor (2017 – 2018)

Bay Area Legal Aid (2013 – 2014)
Board member (2013 – 2014)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical

implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

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.

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.

Empirical Research Can Help Inform Pretrial Release Decisions, The Bench, Spring 2022. Copy supplied.

Emerging Social Science Can Inform Pretrial Release Decisions, The Daily Journal, May 26, 2021. Copy supplied.

Judicial Ethics and Independence Must Guide Judges' Responses to Racial Injustice, The Daily Journal, July 31, 2020. Copy supplied.

Standing Committee Spotlight: Consumer Financial Services Committee, Business Law News (2014, Issue 1). I am unable to obtain a copy.

Your Career: Put Pro Bono in Your Career Development Plan, The Recorder, Jan. 3, 2014. Copy supplied.

CFPB Sues CashCall for Debt Collection on Online Payday Loans, Update from the Consumer Financial Services Committee of the California State Bar Association (Dec. 23, 2013). Copy supplied.

Arbitration, Morrison & Foerster Financial Services Report (Winter 2013). Copy supplied.

Arbitration, Morrison & Foerster Financial Services Report (Fall 2013). Copy supplied.

CFPB Issues Final Amendments to New Mortgage Regulations, Update from the Consumer Financial Services Committee of the California State Bar Association (Sept. 18, 2013). I am unable to obtain a copy.

Federal Reserve Banks Seek Comment on Creating a Near-Real-Time Retail Payment System, Update from the Consumer Financial Services Committee of the

California State Bar Association (Sept. 16, 2013). I am unable to obtain a copy.

Class Certification Denied in Home Affordable Mortgage Litigation, Creating Split Among Federal Courts, Update from the Consumer Financial Services Committee of the California State Bar Association (Sept. 6, 2013). I am unable to obtain a copy.

CFPB Report Criticizes Mortgage Servicers for "Sloppy" Practices and Inadequate Compliance Management Systems, Update from the Consumer Financial Services Committee of the California State Bar Association (Aug. 22, 2013). I am unable to obtain a copy.

On Remand in Posting Order Case, District Court Reinstates $203 Million Award Against Wells Fargo, Update from the Consumer Financial Services Committee of the California State Bar Association (May 20, 2013). I am unable to obtain a copy.

Fed Approves Final Rule that Could Allow Expanded Supervision of Nonbanks, Update from the Consumer Financial Services Committee of the California State Bar Association (Apr. 8, 2013). I am unable to obtain a copy.

CFPB Launches Complaint Database, Update from the Consumer Financial Services Committee of the California State Bar Association (Apr. 5, 2013). I am unable to obtain a copy.

CFPB Issues Final Rules Governing High-Cost Mortgages and Ability to Repay, Update from the Consumer Financial Services Committee of the California State Bar Association (Jan. 10, 2013). I am unable to obtain a copy.

Ninth Circuit Rules that Challenge to Overdraft Fees as Unfair Is Preempted, but Claims Based on Affirmative Misrepresentations Are Not, Update from the Consumer Financial Services Committee of the California State Bar Association (Jan. 2, 2013). I am unable to obtain a copy.

Continuing Education for the Bar, *Consumer Financial Protection Act: Federal Preemption, California Mortgages, Deeds of Trust, and Foreclosure Litigation* (2012 Update). I am unable to obtain a copy of this edition.

Continuing Education for the Bar, *Appraisal Standards, California Mortgages, Deeds of Trust, and Foreclosure Litigation* (2012 Update). I am unable to obtain a copy of this edition.

Continuing Education for the Bar, *Consumer's Ability to Repay Loan, California Mortgages, Deeds of Trust, and Foreclosure Litigation* (2012 Update). I am unable to obtain a copy of this edition.

CFPB Announces New Report and Collaboration with Justice Department on Fair Lending Enforcement, Update from the Consumer Financial Services Committee of the California State Bar Association (Dec. 7, 2012). I am unable to obtain a copy.

CFPB Proposes to Work with Financial Institutions to Test Trial Consumer Disclosures, Update from the Consumer Financial Services Committee of the California State Bar Association (Dec. 17, 2012). I am unable to obtain a copy.

CFPB Issues Warning Letters to Certain Credit Reporting Agencies, Update from the Consumer Financial Services Committee of the California State Bar Association (Dec. 7, 2012). I am unable to obtain a copy.

CFPB Announces that It Will Delay Foreign Remittance Rule and Propose to Relax Some Provisions, Update from the Consumer Financial Services Committee of the California State Bar Association (Nov. 27, 2012). I am unable to obtain a copy.

DFI Implements New Statute on Levying on Deposit Accounts and Safe Deposit Boxes, Update from the Consumer Financial Services Committee of the California State Bar Association (Nov. 14, 2012). I am unable to obtain a copy.

FFIEC Issues Revised IT Exam Handbook and Guidelines, Update from the Consumer Financial Services Committee of the California State Bar Association (Nov. 1, 2012). I am unable to obtain a copy.

CFPB Releases First Supervisory Highlights Report, Update from the Consumer Financial Services Committee of the California State Bar Association (Nov. 1, 2012). I am unable to obtain a copy.

CFPB Publishes Rule Regulating Larger Nonbank Debt Collectors, Update from the Consumer Financial Services Committee of the California State Bar Association (Nov. 1, 2012). I am unable to obtain a copy.

CFPB Announces Study of Mandatory Arbitration Clauses, Update from the Consumer Financial Services Committee of the California State Bar Association, (Apr. 27, 2012). I am unable to obtain a copy.

CFPB Proposes Rule to Protect Privileged Information, Update from the Consumer Financial Services Committee of the California State Bar Association, (Mar. 14, 2012). I am unable to obtain a copy.

CFPB Proposes Rule Regarding Supervision of Large Debt Collectors and Consumer Reporting Agencies, Update from the Consumer Financial Services Committee of the California State Bar Association (Feb. 22, 2012). I am unable to obtain a copy.

Congress to Consider Legislation to Ensure that Information Provided to CFPB Remains Privileged, Update from the Consumer Financial Services Committee of the California State Bar Association (Feb. 16, 2012). I am unable to obtain a copy.

CFPB Publishes Mortgage Origination Examination Procedures Governing Banks and Non-Banks, Update from the Consumer Financial Services Committee of the California State Bar Association (Jan. 12, 2012). I am unable to obtain a copy.

Supreme Court Requires Consumers to Arbitrate Credit Repair Organizations Act Claims, Update from the Consumer Financial Services Committee of the California State Bar Association (Jan. 12, 2012). I am unable to obtain a copy.

CFPB Releases Initial Report on Credit Card Complaints and Plans to Seek Public Comment on Disclosure of Complaint Information, Update from the Consumer Financial Services Committee of the California State Bar Association (Dec. 6, 2011). I am unable to obtain a copy.

CFPB Announces Plan to Seek Public Input on Streamlining Regulations, Update from the Consumer Financial Services Committee of the California State Bar Association (Dec. 5, 2011). I am unable to obtain a copy.

California Court of Appeal Holds that the UCL Cannot Be Used to Enforce the Federal Truth In Savings Act, Update from the Consumer Financial Services Committee of the California State Bar Association (Dec. 2, 2011). I am unable to obtain a copy.

National Bank Act Preempts Prepaid Card Fee Disclosure Claim, Update from the Consumer Financial Services Committee of the California State Bar Association (Dec. 2, 2011). I am unable to obtain a copy.

CFPB Announces Plan to Give Advance Notice of Possible Enforcement Actions, Update from the Consumer Financial Services Committee of the California State Bar Association (Nov. 10, 2011). I am unable to obtain a copy.

CFPB Seeks Public Feedback on Model Mortgage Closing Form, Update from the Consumer Financial Services Committee of the California State Bar Association (Nov. 10, 2011). I am unable to obtain a copy.

Ninth Circuit Permits Class to Recover Statutory Damages Under Both Federal Debt Collection Practices Act and California's Rosenthal Act, Update from the Consumer Financial Services Committee of the California State Bar Association (Sept. 29, 2011). I am unable to obtain a copy.

Federal Court Finds State ATM Processing Rule Preempted, Holding that Dodd-Frank Does Not Materially Change Preemption Analysis, Update from the Consumer Financial Services Committee of the California State Bar Association (Sept. 23, 2011). I am unable to obtain a copy.

California Court Finds that Song-Beverly Does Not Apply to Online Transactions, Update from the Consumer Financial Services Committee of the California State Bar Association (Sept. 2, 2011). I am unable to obtain a copy.

FDIC Issues Letter Clarifying Overdraft Guidance, Update from the Consumer Financial Services Committee of the California State Bar Association (June 16, 2011). I am unable to obtain a copy.

It's Time to Break the Review's Silence, The Harvard Law Record, Oct. 2, 2003. Copy supplied.

Estopping the Madness at the PTO: Improving Patent Administration Through Prosecution History Estoppel, 116 Harv. L. Rev. 2164 (2003). Copy supplied.

Bingham McCutchen LLP, Morrison & Foerster LLP, and Heller Ehrman White & McAuliffe LLP, *Preserving Diversity in Higher Education: A Manual on Admissions Policies and Procedures After the University of Michigan Decisions* (2003). In 2003, I worked as a summer associate at Morrison & Foerster and was assigned to research legal issues for this manual. I do not recall which portions I helped research. Copy supplied.

The Supreme Court – 2001 Term, Barnes v. Gorman, 116 Harv. L. Rev. 342 (2002). Copy supplied.

Recent Case: Second Circuit Classifies the Posting and Linking of Computer Code as Expressive Conduct Rather than Pure Speech, 115 Harv. L. Rev. 2042 (2002). Copy supplied.

Hale and Dorr (now Wilmer Hale), Client Alert, *Invisible Ink: When What You See Is Not What You Get*, Sept. 26, 2001. Copy supplied.

The Ontology of Cyberspace: Law, Philosophy, and the Future of Intellectual Property, 14 Harv. J.L. & Tech. 325 (Fall 2000). Copy supplied.

Person of Faith: Race and Religion as Experiential Knowledge, Perspective (Dec. 1998). Copy supplied.

A Long Way To Go: In Defense of Minority Paranoia, Perspective (Fall 1997). Copy supplied.

Slanted Views: Media Prejudice in the John Huang Scandal, Perspective (May 1997). Copy supplied.

Taiwan's Tiananmen: 2-28 and Taiwan's Struggle for Independence, Perspective (Apr. 1997). Copy supplied.

Memorializing Exclusion: Gay Marriage in Mem Church, Perspective (Apr. 1997). Copy supplied.

Introspective: Asian-American Apathy, Perspective (Mar. 1997). Copy supplied.

Where Have All the Feminists Gone? Perspective (Feb. 1997). Copy supplied.

The Religious Left: God and the Liberal Agenda, Perspective (Feb. 1997). Copy supplied.

Letter to the Editor: Perspective Writer Takes on Critics of Middle East Piece, The Harvard Crimson (Feb. 5, 1997). Copy supplied.

The New Red Scare: Western Prejudices Against Islamic Fundamentalism, Perspective (Jan. 1997). Copy supplied.

Hiding Homophobia: The FDO Quietly Sanctions Discrimination, Perspective (Dec. 1996). 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.

San Francisco Superior Court Statement on Equity and Justice (July 13, 2020). I participated in the preparation of this statement, along with other judges. Copy supplied.

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

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the

date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

December 8, 2021: Speaker, Judges in the Classroom, Kittredge School, San Francisco, California. Notes and presentation supplied.

December 2, 2021: Speaker, Judges in the Classroom, Claire Lillenthal Elementary School, Virtual Presentation. Presentation supplied.

May 5, 2021: Moderator, San Francisco Superior Court, Empirical Research on Pretrial Detention and Release, Virtual Presentation. Notes supplied.

April 14, 2021: Panelist, Queen's Bench Bar Association, Tips from the Bench, Virtual Presentation. The panel discussed best practices for virtual hearings, as part of a program geared toward lawyers within the first five years of their practice. I have no notes, transcript, or recording. The address for the Queen's Bench Bar Association is 816 East Fourth Avenue, San Mateo, California 94401.

October 28, 2020: Guest Lecture, University of California Hastings Law, Criminal Procedure, Pretrial Release and Arraignment, Virtual Presentation. I delivered a guest lecture and answered questions from students about pretrial detention, bail, release, and arraignment. I have no notes, transcript, or recording. The address for the University of California Hastings Law is 200 McAllister Street, San Francisco, California 94102.

June 26, 2020: Panelist, Government Enforcement and Compliance Committee of the National Asian Pacific American Bar Association, Court Operations During COVID: Approaches, Solutions, and Litigation, Virtual Presentation. I spoke on a panel with other judges about the policies at our courthouse for staff and public access, conducting virtual hearings, and waivers of physical presence for the defendants, as well as trial procedures during COVID. I have no notes, transcript, or recording. The address for the National Asian Pacific American Bar Association is 1612 K Street, Northwest, Suite 300, Washington, DC 20006.

March 30, 2020: Guest Lecture, University of California Hastings Law, Criminal Procedure, Sentencing, Virtual Presentation. I delivered a guest lecture and answered questions from students about the considerations that apply in sentencing. I have no notes, transcript, or recording. The address for the University of California Hastings Law is 200 McAllister Street, San Francisco, California 94102.

July 11, 2019: Panelist, Bar Association of San Francisco, Meet the New Judges, San Francisco, California. I discussed my path to the bench and tips for attorneys appearing before the court. I have no notes, transcript, or recording. The address for the Bar Association of San Francisco is 201 Mission Street, Suite 400, San Francisco, California 94105.

April 23, 2019: Panelist, National Association of Women Judges, Color of Justice, San Francisco, California. I spoke to an audience of San Francisco high school students from historically disadvantaged neighborhoods about my own path to the bench, how I found mentors, and how I had never really met a lawyer until I went to law school. I have no notes, transcript, or recording. The address for the National Association of Women Judges is P.O. Box 3363, Warrenton, Virginia 20188.

April 16, 2019: Guest Lecture, University of California Hastings Law, Criminal Procedure, Plea Bargaining and Jury Selection, San Francisco, California. I delivered a guest lecture and answered questions from students about how plea bargaining and jury selection work in the state courts. I have no notes, transcript, or recording. The address for the University of California Hastings Law is 200 McAllister Street, San Francisco, California 94102.

March 14, 2019: Panelist, Asian American Bar Association of the Greater Bay Area, How to Become a Judge Pro Tem in San Francisco Superior Court, San Francisco, California. I spoke on a panel explaining how to become a judge pro tem, and what the expectations and responsibilities are for those who might be interested in pursuing such an opportunity. I have no notes, transcript, or recording. The address for the Asian American Bar Association of the Greater Bay Area is P.O. Box 387, San Francisco, California 94104.

November 28, 2018. Speaker, San Francisco Superior Court, Investiture Ceremony, San Francisco, California. Notes supplied.

November 6, 2018: Panelist, San Francisco Superior Court, Bench Conduct and Demeanor Training, San Francisco, California. I participated in a panel to train judges pro tem regarding demeanor on the bench, ethics, and other judicial conduct issues. I have no notes, transcript, or recording. The address for San Francisco Superior Court is 400 McAllister Street, San Francisco, California 94102.

October 21, 2018: Panelist, San Francisco Superior Court and Bar Association of San Francisco, Meet the Judges Neighborhood Outreach (Ingleside Terrace), San Francisco, California. I answered questions from community members about how the courts operate. I have no notes, transcript, or recording. The address for San Francisco Superior Court is 400 McAllister Street, San Francisco, California 94102. The address for the Bar Association of San Francisco is 201 Mission Street, Suite 400, San Francisco, California 94105.

June 2017 (specific date unknown): Speaker, Organized Crime Drug Enforcement Task Force, Western Regional Conference, Techniques for Investigating Crimes on the Darkweb, San Francisco, California. I delivered a lecture to a group of approximately 200 prosecutors and federal agents about techniques for investigating crimes and financial transactions on the darkweb. I have no notes, transcript, or recording. The address for the Organized Crime Drug Enforcement Task Force is 441 G Street, Northwest, Suite 6B13, Washington, DC 20530.

August 3, 2016: Speaker, Asian American Bar Association of the Greater Bay Area, Judicial Mentorship Program Kick-off Dinner, San Francisco, California. I introduced our main speaker, California Court of Appeal Justice Harry Low, at a dinner to kick off a mentorship program. I have no notes, transcript, or recording. The address for the Asian American Bar Association of the Greater Bay Area is P.O. Box 387, San Francisco, California 94104.

March 18, 2016: Speaker, Asian American Bar Association of the Greater Bay Area, 40th Anniversary Installation Dinner, San Francisco, California. I spoke briefly at this event to encourage attorneys interested in the bench to apply for a mentorship program that would pair them with sitting judges. I have no notes, transcript, or recording. The address for the Asian American Bar Association of the Greater Bay Area is P.O. Box 387, San Francisco, California 94104.

March 20, 2014: Speaker, State Bar of California, Consumer Financial Services Committee, Recent Regulation and Litigation Regarding Short-Term Lenders and Their Service Providers, San Francisco, California. Announcement supplied.

October 11, 2013: Speaker, State Bar of California, Annual Meeting, New Developments in Class Certification Law: Ascertaining the Meaning of Ascertainability, San Jose, California. I delivered a presentation about new developments in appellate case law concerning the ascertainability requirement for class certification. I have no notes, transcript, or recording. The address for the State Bar of California is 180 Howard Street, San Francisco, California 94105.

October 11, 2013: Moderator, State Bar of California, Annual Meeting, Panel: New Developments in Mortgage Lending Regulation, Litigation, and Legislation, San Jose, California. I moderated a panel about legal developments in mortgage lending. I have no notes, transcript, or recording. The address for the State Bar of California is 180 Howard Street, San Francisco, California 94105.

September 20, 2013: Panelist, American Bar Association Tax Section, How the US Supreme Court's Opinion on DOMA Will Affect Same-Sex State and Local Taxpayer Married Couples, San Francisco, California. I spoke on a panel about the Supreme Court's opinion invalidating the Defense of Marriage Act and my *pro bono* work on same-sex marriage cases. I have no notes, transcript, or

recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

July 12, 2013: Panelist, American Constitution Society, After *Windsor* and *Perry*: What's Next for the Marriage Equality Movement, San Francisco, California. I spoke on a panel about my *pro bono* work on same-sex marriage cases and the current litigation landscape regarding marriage equality. I have no notes, transcript, or recording. The address for the American Constitution Society is 1899 L Street, Northwest, Suite 200, Washington, DC 20036.

October 11, 2012: Panelist, Golden Gate University School of Law and the Northern District of California Chapter of the Federal Bar Association, The Marriage Equality Cases In The Federal Courts — Tales From The Front Lines, San Francisco, California. I spoke on a panel about my *pro bono* work on marriage equality litigation. I have no notes, transcript, or recording. The address for Golden Gate University School of Law is 536 Mission Street, San Francisco, California 94105. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

March 9, 2012: Award Recipient, Bay Area Lawyers for Individual Freedom, Legal Service Award, San Francisco, California. In my brief remarks accepting the award on behalf of Morrison & Foerster for our work on marriage equality litigation, I discussed how rewarding *pro bono* work in this area had been, and encouraged audience members to engage in *pro bono* work. I have no notes, transcript, or recording. The address for the Bay Area Lawyers for Individual Freedom is P.O. Box 193383 San Francisco, California 94119.

December 6, 2011: Panelist, Lambda Legal Defense and Education Fund, Recent Developments in Defense of Marriage Act Litigation, San Francisco, California. I spoke on a panel about a *pro bono* case that I was handling with Lambda Legal concerning health benefits for a federal employee's same-sex spouse. I have no notes, transcript, or recording. The address for Lambda Legal Defense and Education Fund is 3325 Wilshire Boulevard, Suite 1300, Los Angeles, California 90010.

October 20, 2011: Speaker, State Bar of California, Consumer Financial Services Committee, Preemption After Dodd-Frank: *U.S. Bank National Association v. Schipper*, San Francisco, California. I delivered a presentation about National Bank Act preemption and new developments in the case law. I have no notes, transcript, or recording. The address for the State Bar of California is 180 Howard Street, San Francisco, California 94105.

March 23, 2011: Panelist, State Bar of California, Business Law Section, What's New on the Horizon: Hot Topics in Consumer Law, San Francisco, California. I discussed new developments in Home Affordable Modification Program (HAMP)

litigation. I have no notes, transcript, or recording. The address for the State Bar of California is 180 Howard Street, San Francisco, California 94105.

December 17, 2010: Speaker, State Bar of California, Consumer Financial Services Committee, Recent Developments in Mortgage Modification Litigation, San Francisco, California. I discussed new developments in mortgage modification class actions. I have no notes, transcript, or recording. The address for the State Bar of California is 180 Howard Street, San Francisco, California 94105.

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.

Morrison & Foerster, *MoFo Alumna Spotlight: Judge Rita F. Lin*, Mar. 11, 2021. Copy supplied.

Tyler Piaget, *A Tailored Approach: Judge Rita Lin Says She Tries to Craft Solutions Based on the Interests of the Parties*, The Daily Journal, Oct. 8, 2020. Copy supplied.

Previous Law Firm Partner, Now Assistant U.S. Attorney, Makes It Work With Two Young Boys, Get Latitude, Jan. 11, 2017. Copy supplied.

Morrison & Foerster, *Marriage Equality: Morrison & Foerster, Lambda Legal, and the Defeat of DOMA*, June 23, 2015. Video available at https://www.youtube.com/watch?v=UgEB2iz0yF0.

Deb Mallgrave, *The Hidden Benefits of Pro Bono*, American Bar Association Journal, Oct. 28, 2014. Copy supplied.

Eye on the Bench: First Circuit's Chief Judge Sandra Lynch Breaks New Ground on Multiple Fronts, U.S. Law Week, Feb. 25, 2014. Copy supplied.

Press Release, *Ninth Circuit Dismisses Appeal of District Court Ruling for Lambda Legal Client Karen Golinski*, Lambda Legal, July 23, 2013. Copy supplied.

Dylan Matthews, *The Supreme Court Struck Down Part Of DOMA. Here's What You Need To Know*, Washington Post, June 26, 2013. Copy supplied.

Stephen Miller, *Now What? Employer Benefits Obligations Post-DOMA*, SHRM, June 26, 2013. Copy supplied.

Anne A. Marchessault, *DOMA's 'Contradictory Marriage Regimes' Violate*

Constitution, High Court Rules 5-4, Bloomberg BNA, June 26, 2013. Copy supplied.

Katherine Rautenberg, *BigLaw Attys Praise High Court's Gay Marriage Rulings*, Law360, June 26, 2013. Copy supplied.

Eric Young, *Bay Area Businesses Argued Against DOMA, Prop. 8*, San Francisco Business Times, June 26, 2013. Copy supplied.

Newstex, *Defense of Marriage Act Thrown Out by Supreme Court*, Lawyers.com Blog, June 26, 2013. Copy supplied.

Morrison & Foerster, *Bold. Brilliant. Accomplished. MoFo Women*, 2013. Copy supplied.

Lisa Holton, *Lawyers on the Fast Track*, The Recorder, June 4, 2012. Copy supplied.

Lisa Holton, *Profile: Rita Lin*, The Recorder, May 31, 2012. Copy supplied.

John Roemer, *Top Women Lawyers*, The Daily Journal, May 9, 2012. Copy supplied.

Feds Appeal Ruling that DOMA Is Unconstitutional, Westlaw Journal of Insurance Coverage, Mar. 16, 2012. Copy supplied.

Joe Davidson, *Judge Finds DOMA Discriminatory*, Washington Post, Feb. 27, 2012. Copy supplied.

Dan Levine, *Gay Spouse Given Health Benefits in U.S. Court Case*, Reuters, Feb. 22, 2012. Copy supplied.

Ginny LaRoe, *A Plum Role for a MoFo Associate*, The Recorder, Dec. 23, 2011. Copy supplied.

I recall giving a quote to a local television reporter regarding *Golinksi v. Office of Personnel Management* in December 2011, but I do not recall which station it was. I am unable to locate a recording or transcript.

Ginny LaRoe, *White Turns Up Heat on Lawyer Defending DOMA*, The Recorder, Dec. 16, 2011. Copy supplied.

Press Release, *U.S. District Court Hears Oral Argument in Case Challenging Constitutionality of DOMA*, Lambda Legal, Dec. 16, 2011. Copy supplied.

Press Release, *DOMA Under Fire in Equal Benefits Case*, Lambda Legal, Apr.

14, 2011. Copy supplied.

Press Release, *DOJ Delivers Powerful Critique of DOMA in Lambda Legal Case*, Lambda Legal, July 5, 2011. Copy supplied.

Press Release, *DOMA Shift Leaves Government Out of Excuses, Lambda Legal, Morrison & Foerster Inform Judge*, Lambda Legal, Mar. 3, 2011. Copy supplied.

Matthew S. Bajko, *SF Federal Judge Hears DOMA Challenge*, Bay Area Reporter, Dec. 30, 2010. Copy supplied.

Bree Z. Tollinger, *Students Protest Labor Conditions at Guess?* The Harvard Crimson, Sept. 25, 1998. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Since September 2018, I have served as a judge of the Superior Court of California, County of San Francisco. I was appointed by Governor Jerry Brown. Our court has unlimited jurisdiction in criminal, civil, probate, juvenile delinquency, juvenile dependency, and family law matters. Since my appointment, my assignments have included traffic court, felony preliminary hearings, and criminal trials.

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

Since 2021, I have been assigned to preside over criminal trials. I have presided over six trials where a jury verdict was reached. I have presided over four additional trials in which no jury verdict was reached, but judgment was entered for the defense, either because the jury was unable to reach a verdict and the prosecution elected not to retry the case or because the prosecution dismissed the charges after the trial began.

From 2019 to 2020, I was assigned to a preliminary hearings department. In that assignment, I presided over hundreds of felony criminal cases, handling motions to suppress, pretrial motions, arraignments, and pleas and associated sentencings. If cases could not be resolved in my courtroom, I would hold preliminary hearings. Those cases that survived preliminary hearing would be reassigned to the master criminal calendar judge to be sent out to other judges for trial, settlement, or further motions practice. Most of the cases over which I presided in the preliminary hearings department have reached judgment, either through a negotiated resolution in my courtroom or through trial or negotiated disposition before another judge.

i. Of these cases, approximately what percent were:

jury trials: 100%
bench trials: 0%

ii. Of these cases, approximately what percent were:

civil proceedings: 0%
criminal proceedings: 100%

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

I have not issued any written opinions. Rulings in our court are typically made orally on the record.

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. Jacobo*, San Francisco Superior Court, No. 13029231 (2022)

I presided over this first-degree murder trial, in which the principal defense was that Mr. Jacobo acted in self-defense. I ruled on various evidentiary issues, including the admissibility of evidence concerning the decedent's alleged character for violence, rebuttal evidence regarding Mr. Jacobo's alleged character for violence, and evidence of a witness's refusal to testify despite the threat of contempt sanctions. The jury convicted Mr. Jacobo of second-degree murder. The case is awaiting sentencing.

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Counsel for Defendant:
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2. *People v. Higginbotham*, San Francisco Superior Court, No. 16021040 (2022)

In this murder case, I presided over a series of hearings on a motion to suppress, associated motions to quash and traverse a related search warrant, and a motion to unseal a related search warrant. I held an *in camera* hearing on the motion to unseal and allowed partial unsealing of the search warrant. I denied the remaining motions. This case involved an issue of first impression as to whether California's Electronic Communications Privacy Act ("ECPA") required that location data from a GPS tracker placed on a car be sealed and that a separate court order be required before the police could use that data in unrelated investigations. I held that the ECPA did not impose such a requirement on GPS data from vehicle trackers. After I entered my ruling on the motions, the case returned to the master criminal calendar judge, and is currently awaiting trial.

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Counsel for Defendant:
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3. *People v. Timms*, San Francisco Superior Court, No. 18008239 and 18010935 (2021)

I presided over a jury trial in which Mr. Timms was accused of attempted murder for shooting his girlfriend. I granted a *Batson-Wheeler* challenge by the prosecution after finding that the defense had improperly excluded Asian American jurors based on race. I therefore ordered that jury selection restart with a new panel. I also ruled on various evidentiary issues concerning Mr. Timms' girlfriend's statements to the police. His girlfriend did not testify at trial. Mr. Timms was acquitted of attempted murder. He was convicted of firearms assault with an allegation of inflicting great bodily injury in a domestic violence context, gun possession, domestic violence, and witness intimidation. I sentenced Mr. Timms to 23 years in state prison, based in part on his significant violent criminal history.

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4. *People v. Kolda*, San Francisco Superior Court, No. 18015358 (2020 – 2021)

The defendant was charged with possessing methamphetamine and heroin for sale, as well as an illegal firearm, based on the results of a search warrant executed at an address connected to her. The search warrant was based in part on information obtained from a confidential informant, which was sealed. The defense moved to unseal those portions of the search warrant and to discover the identity of the informant. After holding a hearing with the affiant of the search warrant, I partially unsealed the warrant to reveal the general timing of the tip from the informant, which the affiant stated would not compromise the informant's safety. However, I denied the motion to discover the informant's identity, and kept the remaining portions of the warrant sealed. The defense then moved to traverse the warrant based on staleness, due to the passage of 26 days between the initial tip and the issuance of the warrant. I denied the motion to traverse. The officers had conducted surveillance six days before the warrant issued and had seen the defendant meeting at the residence with a known methamphetamine dealer, with whom she had been arrested eight months earlier. In that prior arrest, the defendant and the other individual were in possession of a large quantity of methamphetamine, a digital scale, and large quantities of cash. I concluded that this additional surveillance, combined with the information from the confidential informant, provided sufficient probable cause for the search. After hearing both motions, I was reassigned to a trial department, and had no further involvement in the case. I understand that the defendant later entered into a pretrial diversion agreement, which she is in the process of completing.

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5. *People v. Flores*, San Francisco Superior Court, No. 19007541 (2021)

The defendant was charged with illegally possessing a concealed firearm on his person. I presided over the evidentiary hearing on the motion to suppress the firearm, which was found during a stop and frisk. I granted the motion to suppress, finding that the officer's actions were inconsistent with any ongoing investigation at the time of the pat-down search. I also found the officer's actions inconsistent with any credible fear for officer safety, because the officer waited a lengthy period (until the interaction was about to end) before performing the search. The prosecution dismissed the case after the motion to suppress was granted.

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6. *People v. Shirvell*, San Francisco Superior Court, No. 19003470 (2019 – 2020)

I presided over the pretrial release hearings, plea negotiations, entry of plea, and sentencing in this attempted murder case. Mr. Shirvell, a Stanford University admissions officer with no criminal history, was accused of stabbing his girlfriend. The police report indicated that Mr. Shirvell was found catatonic at the scene, with a "to do list" that referenced buying LSD. Their housemate and his girlfriend's mother testified at his pretrial release hearing that Mr. Shirvell was a peaceful person and that he and his girlfriend had a loving relationship. The defense argued that Mr. Shirvell had a "bad trip" from LSD. After a psychiatric evaluation, I released Mr. Shirvell on a home detention electronic monitor with a drug testing condition and $200,000 bail. The parties ultimately agreed to a resolution in which Mr. Shirvell pled guilty to assault with a deadly weapon. Pursuant to that agreement and the parties' joint sentencing recommendation, I sentenced him to complete one year of county jail on an electronic monitor,

followed by three years of supervised probation with a warrantless search condition, a no weapons condition, and a requirement to follow his probation-mandated treatment program.

Counsel for the People of the State of California:
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Counsel for Defendant:
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Gasner Criminal Law
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(415) 782-6000

7. *People v. Ching and Lomas*, San Francisco Superior Court, Nos. 19008914 and 19008917 (2019)

I presided over pretrial motions in a case in which Ms. Ching and Mr. Lomas allegedly murdered Ms. Ching's father and dismembered his body. One of the key issues was the cause of death. The defense argued that the victim had already died and that the defendants committed the lesser crime of dismembering the dead body to hide his death, but that they had not murdered him. The medical examiner refused to turn over a draft report prior to testimony at preliminary hearing, citing deliberative process privilege. No final report had been prepared. I ruled that the defendants' due process rights required disclosure of the draft report if there was no final report, to allow adequate opportunity for effective cross-examination of the medical examiner at preliminary hearing. The matter was then sent to another judge for further pretrial settlement discussions, where a resolution was reached. Mr. Lomas pled guilty to voluntary manslaughter and was sentenced to six years in state prison. Ms. Ching pled guilty to mutilating human remains and was sentenced to three years in state prison, with the execution of her sentence suspended pending a period of probation.

Counsel for the People of the State of California:
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Counsel for Defendant Lomas:

Ilona Solomon
Office of the Public Defender
555 7th Street
San Francisco, CA 94103
(415) 575-8882

Counsel for Defendant Ching:
Jose Umali
Attorney at Law
507 Polk Street, Suite 340
San Francisco, CA 94102
(415) 398-5750

8. *People v. Cook*, San Francisco Superior Court, No. 19002360 (2019 – 2020)

The prosecution alleged that the defendant committed eight robberies over the course of a single day. The defendant was a young man with no prior criminal history, and no victims were injured during the robberies. I worked with the parties on resolving the case, took the plea, and sentenced the defendant. Based on the plea agreement and joint sentencing recommendation of the parties, I sentenced the defendant to one year in county jail, a two-year residential treatment program with an electronic monitor, and a requirement that he complete five years without any new criminal activity. The agreement provided that, if he failed any of those requirements, he would be sentenced to eight years in state prison. In the end, he left the treatment program and cut off his electronic monitor, and I imposed the eight-year prison sentence.

Counsel for the People of the State of California:
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Counsel for Defendant:
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9. *People v. Brown*, San Francisco Superior Court, No. 18012089 (2019)

I conducted the preliminary hearing and ruled on the motion to suppress in this case alleging illegal firearm possession. The officers testified that Mr. Brown and his date parked in a "no parking" zone on a hill with a view of the city one

evening. The police smelled marijuana from his parked car and searched the car, finding a firearm in a backpack. While it is not illegal to smoke marijuana in a parked car in California, I nonetheless denied the motion to suppress. There was, in plain view, a jar of marijuana with a label stating that it contained 35 grams of marijuana, above the amount permitted by state law. That supported the officers' decision to search for additional marijuana in the car, which led to the discovery of the firearm. I found sufficient probable cause to hold the defendant to answer based on the preliminary hearing. The case was then sent to the master criminal calendar judge, and was eventually dismissed after the defendant pled guilty in a separate matter.

Counsel for the People of the State of California:
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Counsel for Defendant:
Landon Davis
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10. *People v. Walls*, San Francisco Superior Court, No. 18013240 (2018 – 2019)

This robbery case was the first felony trial over which I presided as a judge. The prosecution alleged that the defendant pushed the victim, causing her to drop her phone, and then took the phone. The principal issue at trial was whether the defendant had formed the requisite intent to steal at the time he pushed the victim. The defendant was homeless and had significant substance abuse issues. Before taking the victim's phone, he was running through traffic shouting nonsense, and the defense argued that his motive was unclear when he ran up to the victim, who might have been videotaping him on her phone. The jury convicted the defendant of robbery. I sentenced the defendant to six years in state prison, but suspended the sentence pending a one-year residential drug treatment program. He had already served over a year in county jail while awaiting trial. He did not have a violent criminal history, and, before becoming addicted to methamphetamine a few years earlier, he had been a law-abiding citizen who had been fully employed. If he completed the treatment program successfully and remained arrest-free for three years, he would not have to serve the prison sentence. If he failed either of those conditions, he would be required to serve the prison sentence and would waive all his credits for the time he had already spent in county jail. In the end, he completed the program and remained arrest-free, but passed away in July 2020.

Counsel for the People of the State of California:
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Counsel for Defendant:
Judge Michelle Tong (formerly of the Public Defender's Office)
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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

I have not issued any written opinions. Rulings in our Court are typically made orally on the record.

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

None.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have not issued any written opinions that are unpublished. Rulings in our Court are typically made orally on the record.

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 do regularly rule on Fourth and Fifth Amendment issues, but rulings in our Court are typically made orally on the record.

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 never 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 follow the procedures set forth in the California Code of Judicial Ethics, Canon 3E, and California Code of Civil Procedure section 170.1, in determining whether to recuse myself in cases to which I am assigned. I have recused myself in two matters that have come before me:

People v. Adler, San Francisco Superior Court, No. 19010018 (2019). During a court appearance in his felony vandalism case, Mr. Adler professed his love for me and made an inappropriate sexual comment toward me. Mr. Adler had appeared previously in my courtroom many times, and had a history of mental health issues. In prior appearances, he had made increasingly inappropriate comments about his admiration for me, which I repeatedly instructed him to stop making. In this final instance, he became disruptive, and was escorted from the courtroom by the bailiff. I recused myself *sua sponte* because I feared that I would be biased against him due to his comments and my own safety concerns.

People v. Rocha, San Francisco Superior Court, No. 20006097 (2020). Mr. Rocha was a homeless man in my neighborhood whom I had seen weekly on my regular running route. One day, I saw him in a loud verbal altercation with a passerby, and another member of my running group intervened to calm the situation. Several weeks later, Mr.

Rocha appeared in my courtroom in a murder case in which he was accused of killing a passerby after an altercation that bore some similarities to the one that I had witnessed. I recused myself *sua sponte* because of my outside knowledge of Mr. Rocha.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held or sought any public office other than judicial office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

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 2003 to 2004, I served as a law clerk for the Honorable Sandra Lynch of the United States Court of Appeals for the First Circuit.

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

I have not practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

2003 – 2004
United States Court of Appeals for the First Circuit
Honorable Sandra Lynch
One Courthouse Way
Boston, Massachusetts 02210

Judicial Law Clerk

2004 – 2014
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
Partner (2013 – 2014)
Associate (2004 – 2012)

2014 – 2018
United States Attorney's Office
Northern District of California
450 Golden Gate Avenue, 11th floor
San Francisco, California 94102
Assistant United States Attorney

2018 – present
San Francisco Superior Court
Hall of Justice
850 Bryant Street
San Francisco, California 94103
Superior 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 not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

From 2003 to 2004, I served as a law clerk for the Honorable Sandra Lynch on the United States Court of Appeals for the First Circuit. I worked on a broad range of federal civil and criminal appellate matters.

Following my clerkship, from 2004 to 2014, I practiced at Morrison & Foerster LLP, where I was a litigation associate and then a litigation partner. My practice focused on complex civil litigation. I represented individuals and corporations in a wide variety of matters, including patent litigation, copyrights, trade secret misappropriation, unfair competition, breach of contract, and real estate. My patent litigation practice included both litigation in the federal courts and, with the assistance of patent

attorneys, petitions for *inter partes* reexamination before the Patent and Trademark Office. I also represented banks, financial institutions, and fintech companies, and served as Deputy Chair of the Firmwide Financial Services Litigation Group. I managed teams of attorneys across multiple offices to defend against nationwide waves of related class actions and government enforcement actions. I served as lead counsel for my clients in multi-district litigation matters. My work focused principally on dispositive motions, including motions for summary judgment, motions to compel arbitration, motions to dismiss, and class certification. I argued and won dispositive motions for my clients in major nationwide and statewide class actions. I took and defended numerous depositions, including those of named class representatives, high-ranking executives, and experts. I participated in countless settlement conferences and mediations. I also maintained an active *pro bono* practice across a range of areas, including marriage equality, disability rights, immigration, and criminal law.

In 2014, I joined the United States Attorney's Office for the Northern District of California as a federal prosecutor. I investigated and prosecuted federal criminal cases in a broad variety of areas, including public corruption, organized crime, drug trafficking, money laundering, health care fraud, immigration fraud, illegal firearms, child pornography, counterfeit currency, and violent crime. I was initially assigned to the General Crimes Section, which focused on illegal firearms, narcotics, and violent crime. Beginning in 2015, I was assigned to the Organized Crime Drug Enforcement Task Force, where I conducted complex investigations of large-scale international drug trafficking organizations, including Title III wiretaps. I led teams of agents and financial analysts in dismantling those networks and seizing the illegal proceeds of their criminal activity. I developed the Northern District of California's program for investigating doctors and other medical professionals who were illegally prescribing opioids. I also led our unit's first darkweb investigation. In 2018, I moved to the Special Prosecutions section, where I focused on public corruption. I investigated a local restaurant owner for allegedly bribing government officials and initiated a wiretap of his phone. The information from that wiretap led to the prosecution of both the restaurant owner and the head of San Francisco's Department of Public Works after I left the U.S. Attorney's Office to join the state court bench.

In 2018, I left the U.S. Attorney's Office upon my appointment to the state court bench. I have served as a Judge of the Superior Court of California in San Francisco County since 2018.

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

At Morrison & Foerster LLP, my typical clients were large banks and financial institutions, smaller fintech companies, and technology companies ranging from startups to Fortune 500 companies. I specialized in complex civil litigation, financial services litigation, and intellectual property litigation. I also maintained an active *pro bono* practice in which my typical clients were indigent individuals.

At the United States Attorney's Office, I represented the United States in criminal prosecutions.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Prior to my appointment to the bench, my practice was entirely in litigation. Between 2004 and 2014, while I was in private practice, I typically appeared in court around once a month, with some periods having more appearances and others having fewer appearances. Most of my appearances were in federal court. Between 2014 and 2018, as a federal prosecutor, I appeared in federal court regularly, at least once a week.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: 3%
   3. other courts: 0%
   4. administrative agencies: 2%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 60%
   2. criminal proceedings: 40%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried six trials to verdict in which I served as lead counsel or co-lead counsel. I have argued more than 100 motions in federal court including, while in private practice, motions to dismiss, summary judgment motions, motions to compel arbitration, and motions for class certification, and, while at the U.S. Attorney's Office, motions to detain, sentencings, motions to suppress, motions to discover confidential informants, and other pretrial motions.

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.

Office of Pers. Mgmt. v. Golinski, No. 12-16 (brief of respondent in support of petition for certiorari before judgment, 2012 WL 3027182) (cert. denied).

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. Lague*, No. CR 17-00150-HSG

Mr. Lague was a physician's assistant who was the top opioid prescriber in the state of California. I led a lengthy undercover investigation that showed he was prescribing without a legitimate medical purpose. It was one of our district's first investigations into medical professionals illegally prescribing opioids. At trial, I was lead counsel. I delivered the opening statement, and presented the testimony of the cooperating witness, the expert analysis of the defendant's prescribing patterns, and the prosecution's medical expert. I also cross-examined the defendant, and delivered the rebuttal closing argument. The jury convicted on 39 drug distribution counts, and acquitted on seven health care fraud counts. After trial and prior to sentencing, I left the U.S. Attorney's office because I was appointed to the state court bench. I was therefore not involved in the defendant's sentencing or his appeal. He was sentenced to ten years in prison, and his appeal was denied.

Judge:
Honorable Haywood S. Gilliam
United States District Court for the Northern District of California

Co-counsel for the United States:
Frank Riebli
United States Attorney's Office for the Northern District of California

1301 Clay Street
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(415) 793-1053

Counsel for Defendant:
James Reilly
Summit Defense
4040 Civic Center Drive, Suite 200
San Rafael, CA 94903
(415) 913-0787

Dates of representation: 2016 – 2018

Citations:
United States v. Lague, 971 F.3d 1032 (9th Cir. 2020)
United States v. Lague, No. 17-CR-00150-HSG-1, 2018 WL 3429127 (N.D. Cal. July 16, 2018)

2. *United States v. Zolfaghari et al.*, No. CR 16-00259 SI

I was sole counsel on this case, which involved our unit's first darkweb investigation. The defendants made hundreds of thousands of dollars selling fake oxycodone pills that were created using fentanyl and stamped to look like genuine oxycodone using a pill press. These homemade pills posed a major overdose hazard because small variations in fentanyl could cause in large swings in the potency of the pills. The defendants also laundered their proceeds through bitcoin. Defendant Harris pled guilty and was sentenced to five years in prison. Defendant Zolfaghari stated an intention to plead guilty but fled to Mexico shortly before his change of plea hearing. Defendant Vasquez pled guilty but fled to Mexico with Defendant Zolfaghari while awaiting sentencing. While Defendant Vasquez was a fugitive, I moved to proceed with sentencing *in absentia* based on her prior guilty plea. The district court granted my motion and sentenced her to 151 months in prison. After I left the U.S. Attorney's Office to become a state court judge, Defendants Zolfaghari and Vasquez were apprehended in Mexico and brought back to the United States. Defendant Vasquez was transported to federal prison to serve her previously issued sentence. Defendant Zolfaghari pled guilty and was sentenced to 200 months in prison. I was not involved in his subsequent plea or sentencing.

Judge:
Honorable Susan Illston
United States District Court for the Northern District of California

Counsel for Defendant Zolfaghari:
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Counsel for Defendant Vazquez:
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(415) 565-9600

Counsel for Defendant Harris:
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Wolf, Pennella & Stevens, LLP
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(510) 451-4600

Dates of representation: 2016 – 2018

3. *United States v. Reyna-Ceron et al.*, No. CR 15-00579 VC

I was co-counsel in this investigation and prosecution of a large-scale heroin and methamphetamine trafficking conspiracy in Santa Rosa. After a two-year investigation involving five wiretaps, a federal grand jury indicted twenty defendants on drug trafficking and money laundering charges. The case was named 2016 Opiate Investigation of the Year by the Northern California High Intensity Drug Trafficking Area Program. Together with co-counsel, I directed the agents in their investigation, prepared wiretap applications, and presented the case to the grand jury. I took the lead in preparing the cases for trial and associated motions, and co-counsel served as the primary point of contact for defense counsel in plea negotiations. All defendants ultimately pled guilty, except for one who remained a fugitive. Their sentences ranged from pretrial diversion to 168 months in prison.

Judge:
Honorable Vince Chhabria
United States District Court for the Northern District of California

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Counsel for Defendant C. Reyna-Ceron:
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Counsel for Defendant Rivera-Herrera:
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Counsel for Defendant M. Reyna-Rodriguez:
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Dates of representation: 2015 – 2017

4. *United States v. Seltenrich*, No. CR 15-00393 VC

This bank robbery prosecution relied principally on circumstantial evidence, which included a low-resolution surveillance video, handwriting analysis of the bank robbery note, and the timing of Mr. Seltenrich's flight from a halfway house. Mr. Seltenrich represented himself, with advisory counsel assisting him. I was co-counsel at trial. I delivered the opening statement and presented the testimony of the handwriting expert, bank employees, and a manager of the halfway house. I also delivered the rebuttal

closing argument. The jury convicted Mr. Seltenrich of bank robbery. He was sentenced to 63 months in prison.

Judge:
Honorable Vince Chhabria
United States District Court for the Northern District of California

Co-counsel for the United States:
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Advisory Counsel for Defendant:
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Dates of representation: 2016 – 2017

5. *United States v. Mondragon and Moya*, No. CR-15-00134 VC

I prosecuted two defendants for conspiracy to distribute methamphetamine and possession with intent to distribute methamphetamine, based on a traffic stop in which they were caught with a large quantity of methamphetamine. I was lead counsel at the trial. Among other things, I presented the narcotics expert testimony and testimony concerning cell phone location data. I also cross-examined Mr. Moya, who testified in his own defense, and delivered closing argument. The jury convicted both defendants of distributing methamphetamine, and acquitted both defendants of conspiracy to distribute. Both defendants were sentenced to ten years in prison.

Judge:
Honorable Vince Chhabria
United States District Court for the Northern District of California

Co-counsel for the United States:
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Counsel for Defendant Mondragon:
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Counsel for Defendant Moya:
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Law Chambers Building
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Dates of representation: 2015 – 2017

6. *Golinski v. Office of Personnel Management*, 587 F.3d 956 (9th Cir. 2009) (Kozinski, J.); 781 F. Supp. 2d 967 (N.D. Cal. 2011) (White, J.); 824 F. Supp. 2d 968 (N.D. Cal. 2012) (White, J.); 724 F.3d 1048 (9th Cir. 2013) (Alarcón, Thomas, Berzon, JJ.); 570 U.S. 931 (2013)

I was co-lead counsel representing Ms. Golinski, a staff attorney at the United States Court of Appeals for the Ninth Circuit, in her challenge to the federal government's refusal to provide equal health benefits to her same-sex spouse. The government's refusal was based on the Defense of Marriage Act ("DOMA"), which prohibited federal recognition of same-sex marriages. Together with Lambda Legal, I represented Ms. Golinski at her administrative hearing before the Judicial Council of the Ninth Circuit, where we obtained an order requiring provision of equal benefits. As an interim measure, the Judicial Council ordered that Ms. Golinski be reimbursed on an ongoing basis for her payments on her spouse's individual insurance plan, making her the first federal employee to receive health benefits for her same-sex spouse. The Judicial Council also ordered the Office of Personnel Management, which manages the federal government's health benefits, to enroll Ms. Golinski's spouse in her family health care plan. However, the Office of Personnel Management refused to comply with the administrative order. We then brought suit in federal district court to enforce the Judicial Council's order. Although the district court declined to enforce the administrative order as such, the court granted leave to amend to assert a direct constitutional challenge to DOMA. I argued the summary judgment motion on the constitutional challenge, together with Lambda Legal. The district court granted our motion and struck down DOMA as unconstitutional. While the *Golinski* appeal was pending before the Ninth Circuit, the Supreme Court decided *Windsor*, finding DOMA unconstitutional. The Ninth Circuit therefore dismissed the appeal from the district court's ruling in *Golinski*.

Trial court judge:
Honorable Jeffrey S. White

United States District Court for the Northern District of California

Co-Counsel for Plaintiff:
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Dates of representation: 2008 – 2013

7. *Parks v. MBNA*, No. S183703

We represented the American Bankers' Association and California Bankers' Association as *amici* in a case concerning National Bank Act ("NBA") preemption. The California Court of Appeal had held that the NBA did not federally preempt a California law requiring certain disclosures to accompany preprinted checks provided by a credit card issuer to its cardholders. I was the lead drafter of the *amicus* briefs in support of the petition for review before the California Supreme Court, as well as the subsequent *amicus* briefs on the merits challenging the Court of Appeals decision. The California Supreme Court reversed the Court of Appeals decision. In a landmark decision on NBA preemption, the California Supreme Court adopted the position urged by our clients and quoted at length from our brief, finding that the state law stood as an obstacle to the broad grant of powers provided under the NBA to national banks to conduct the business of banking.

Judges:
Honorable Goodwin H. Liu, Associate Justice (author of opinion)
Honorable Tani G. Cantil-Sakauye, Chief Justice
Honorable Joyce L. Kennard, Associate Justice
Honorable Marvin R. Baxter, Associate Justice
Honorable Kathryn M. Werdegar
Honorable Carol A. Corrigan

Supreme Court of California

Honorable Gene M. Gomes
California Court of Appeal, Fifth Appellate District (sitting by designation)

Co-counsel for American Bankers' Association and California Bankers' Association:
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Counsel for MBNA:
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Dates of representation: 2010 – 2012

Citation: *Parks v. MBNA Am. Bank, N.A.*, 54 Cal. 4th 376 (2012)

8. *Van Slyke v. Capital One*, No. C07-0671 WHA

This nationwide class action lawsuit challenged Capital One's credit card fee structure and its issuance of multiple cards to the same consumer. I wrote and argued the motion to dismiss the California Consumer Legal Remedies Act claim. The court granted the motion, declining to follow a contrary decision interpreting the same statute by another judge on the same district court. Subsequently, I wrote and argued the summary judgment motion on the remaining claims. The court granted the summary judgment motion in its entirety, resulting in judgment in favor of our client.

Judge:
Honorable William Alsup
United States District Court for the Northern District of California

Co-counsel for Capital One:
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Dates of representation: 2007

Citations:
Van Slyke v. Capital One Bank, 503 F. Supp. 2d 1353 (N.D. Cal. 2007)
Van Slyke v. Capital One Bank, No. C 07-00671WHA, 2007 WL 2385108 (N.D. Cal. Aug. 17, 2007)
Van Slyke v. Capital One Bank, No. C 07-00671 WHA, 2007 WL 2874417 (N.D. Cal. Sept. 28, 2007)
Van Slyke v. Capital One Bank, No. C 07-00671 WHA, 2007 WL 3343943 (N.D. Cal. Nov. 7, 2007)
Van Slyke v. Capital One Bank, No. C 07-00671WHA, 2007 WL 3435095 (N.D. Cal. Nov. 13, 2007)
Van Slyke v. Capital One Bank, No. C 07-00671 WHA, 2007 WL 4259405 (N.D. Cal. Dec. 3, 2007)
Van Slyke v. Capital One Bank, No. C 07-00671 WHA, 2007 WL 4570187 (N.D. Cal. Dec. 21, 2007)

9. *Romero v. Holder*, Nos. 06-73573 & 07-74841

I was lead counsel in this case in which several colleagues and I were appointed on a *pro bono* basis by the United States Court of Appeals for the Ninth Circuit. Mr. Romero's *pro se* papers showed that, as a Honduran citizen, he was likely eligible for Temporary

Protected Status ("TPS"), but that he had failed to apply prior to the deadline, due to incorrect legal advice that he had received. We applied for TPS for him, arguing that penalizing him for missing the deadline violated his due process rights. Based on our research, this appeared to be an issue of first impression. Initially, his application was denied. However, following an administrative appeal, he was granted TPS based on our due process argument. Through the Ninth Circuit's mediation process, I negotiated with the government to reopen and administratively close his removal proceedings, allowing Mr. Romero to remain legally in the United States on TPS. Until I left private practice, I continued to represent Mr. Romero on the periodic renewal of his TPS.

Mediator:
Margaret Corrigan, Circuit Mediator
United States Court of Appeals for the Ninth Circuit

Co-counsel for Romero:
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(202) 616-2967

Dates of representation: 2006 – 2014

10. *Munoz et al. v. Sacramento Area Council of Governments et al.*, No. C05-01525 JSW

I was co-lead counsel in a class action lawsuit seeking to require the California Department of Transportation, California Highway Patrol, and local transportation councils to make roadside callboxes accessible to deaf and hard-of-hearing motorists, as required by the Americans with Disabilities Act. I had initially been the associate counsel on the matter, but stepped into the role of co-lead counsel shortly after the lawsuit was initially filed. Together with co-counsel from the California Center for Law and the Deaf and the Disability Rights Legal Center, I negotiated the classwide settlement setting a timeline for installation of TTY-enabled callboxes and ongoing enforcement mechanisms, and handled the motions concerning approval of the settlement.

Judge:
Honorable Jeffrey S. White
United States District Court for the Northern District of California

Co-counsel for Plaintiffs:
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Patricia Mar (formerly with Morrison & Foerster LLP, now retired)

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Counsel for San Benito Council of Governments:
James Thebeau (retired)

Dates of representation: 2005 – 2007

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 judge, I have served on our court's Executive Committee, Bail Review & Pretrial Detention Committee, and Adult Probation Oversight Committee. In those capacities, and in my capacity as a judge assigned to criminal cases, I have sought to improve the administration of criminal justice in our courts. Some projects on which I have worked include: a pilot program for judges to wear electronic monitors for a few days to better understand the technology when ordering those as a condition of release; COVID self-screening procedures for prospective jurors; exploring options for free public transportation for jurors to ease the burden of jury service on those with limited means; motivational interviewing training to help judges be more effective in admonishing defendants and encouraging change; and developing trainings and educational materials for judges on evolving legal requirements for search warrants seeking electronic information.

As a federal prosecutor, I was active in training and teaching. In June 2017, I delivered a presentation to approximately 200 federal agents and prosecutors during the Organized Crime Drug Enforcement Task Force Western Regional Conference about investigating crimes on darkweb marketplaces. I also conducted training programs for other prosecutors on presenting and cross-examining expert witnesses, and taught a program to new prosecutors on how to investigate and prosecute narcotics cases. In 2017 and 2018, I also served as our office's Giglio Coordinator. In that capacity, I trained other prosecutors on the scope of their obligations to disclose impeachment information concerning law enforcement witnesses, and made decisions about the disclosure of such information in close cases.

While at Morrison & Foerster, I served as one of four Team Leaders in the San Francisco office. In that capacity, I led a team of approximately fifteen litigation partners and thirty litigation associates, and managed performance reviews, workload, and workplace satisfaction. I also served on the firm's Women's Initiative Committee, which sought to improve the recruiting and retention of women attorneys, and I co-founded the firm's Working Mothers' Affinity Group, which brought together attorneys to discuss ways to balance the demands of private practice with family obligations.

I have not performed lobbying activities or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution

at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

In Fall 2021, I co-taught an evening course on Criminal Procedure at the University of California Hastings Law School. The course focused on the constitutional and statutory rules that govern investigations into and adjudications of violations of criminal law. The first half covered the Fourth Amendment's protection against unreasonable searches and seizures, the Fifth Amendment's protection against coerced confessions, and the Sixth Amendment's guarantee of the assistance of counsel. The second half discussed the phases of a criminal case from charging through sentencing. Syllabus supplied.

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

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    None.

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

    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.

Almost all the cases on which I worked as a federal prosecutor have reached final resolution. However, I am aware of one significant investigation on which I worked that remains in active litigation. I would recuse myself if a case relating to that investigation, or any case on which I had previously worked, were to come before me as a district court judge.

I do not anticipate any other categories of likely conflicts of interest.

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

If confirmed as a district court judge, I would resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455, and all applicable policies and procedures of the United States Courts.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While in private practice, I handled a variety of *pro bono* matters, including the *Golinski*, *Romero*, and *Munoz* cases described above. In 2014, I oversaw the preparation of *amicus* briefs on behalf of family law professors in a series of marriage equality cases in the United States Courts of Appeals for the Fourth, Sixth, and Tenth Circuits. In October 2013, I worked with the Columbia Law School Sexuality and Gender Law Clinic to prepare an *amicus* brief supporting marriage equality in United States Courts of Appeals for the Ninth Circuit. I also represented a defendant in a criminal trial, a prisoner in a Section 1983 suit, and a defendant in a defamation suit.

I also contributed research to a series of handbooks in my early years as an attorney. In 2005, after Hurricane Katrina, I was part of a team at Morrison & Foerster that prepared a handbook to help survivors of the hurricane with legal issues that arose in connection with the disaster. In 2004, I worked on a voter rights handbook for the election for the Lawyers' Committee for Civil Rights. In 2003, I worked on a handbook for universities summarizing the law on admissions policies and diversity.

As a judge, although I am no longer permitted to represent clients in any capacity, I regularly support the court's community outreach. As part of our court's Judges in the Classroom program, I have visited elementary and middle schools to talk to students about the court system and careers in the law and the bench. Through National Association of Women Lawyers' Color of Justice program, I spoke an audience of San Francisco high school students from historically disadvantaged neighborhoods about my own path to the law and to the bench. I mentor law students and lawyers through the Asian American Bar Association's Mentorship Program, and I run a mentoring circle for

new judges through the California Asian Pacific American Judges Association.

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 and Senator Alex Padilla have each established Judicial Advisory Committees for screening, interviewing, and recommending candidates for the federal judiciary in California. On February 8, 2021, and February 9, 2021, respectively, I submitted applications to the State Chairs of Senator Feinstein's and Senator Padilla's Judicial Advisory Committees for consideration for nomination to the United States District Court for the Northern District of California. On February 10, 2021, I sent both Committees applications for consideration for nomination to the United States Court of Appeals for the Ninth Circuit. On March 19, 2021, I received a request from the State Chair of Senator Feinstein's Judicial Advisory Committee to schedule an interview. On March 22, 2021, in preparation for that interview, I provided supplemental materials to Senator Feinstein's Committee, which I was informed would also be shared with Senator Padilla's Committee. On March 31, 2021, I interviewed with the State Chair of Senator Feinstein's Judicial Advisory Committee. On April 19, 2022, I received an email communication from Senator Padilla's Counsel on Judicial Nominations requesting an interview, and spoke to him the next day. On May 20, 2022, I interviewed with attorneys from White House Counsel's Office. On May 21, 2022, the White House Counsel's Office advised that I was being considered for nomination to the United States District Court for the Northern District of California. Since May 22, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 1, 2022, 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).

   Ramon Ernesto Reyes, Jr.

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

   United States District Judge for the Eastern District of New York

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   United States District Court for the Eastern District of New York
   Theodore Roosevelt United States Courthouse
   225 Cadman Plaza East, Room 1217S
   Brooklyn, New York 11201

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

   1966; Brooklyn, 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.

   1992 – 1993, New York University School of Law; LL.M., 1993

   1989 – 1992, Brooklyn Law School; J.D., 1992

   1984 – 1988, Cornell University; B.S., 1988

   December 1985 – August 1986, Orange County Community College, no degree earned

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

2006 – present
U.S. District Court for the Eastern District of New York
Theodore Roosevelt U.S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201
United States Magistrate Judge

1998 – 2006
U.S. Attorney's Office, Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007
Assistant United States Attorney

1995 – 1998
O'Melveny & Myers LLP
7 Times Square
New York, New York 10036
Associate

1994 – 1995
U.S. District Court, Eastern District of New York
Theodore Roosevelt U.S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201
Law Clerk to Judge David Trager

1993 – 1994
New York City Council
250 Broadway
New York, New York 10007
Legislative Attorney

1991
Morrison & Foerster, LLP
1290 Avenue of the Americas
New York, New York 10104
Summer Associate

1990
New York County District Attorney's Office
One Hogan Place
New York, New York 10013
Intern

1989
Statewide Hispanic Housing Corporation

c/o Carroll Gardens Association
201 Columbia Street
Brooklyn, New York 11231
Program Coordinator

1988 – 1989
Bi-County Gwinnett Pediatrics
976 Killian Hill Road, Southwest
Lilburn, Georgia 30047
Receptionist

1988
Frank's Pizza
64 Main Street
Warwick, New York 10990
Dishwasher, counter-helper

1988
Warwick Valley Central School District
Warwick, New York 10990
Substitute Teacher

Teaching Affiliation

2008 – 2017
Brooklyn Law School
250 Joralemon Street
Brooklyn, New York 11021
Adjunct Professor of Clinical Law

Other Affiliations (uncompensated):

2018 – present
Brooklyn Law School
250 Joralemon Street
Brooklyn, New York 11021
Board of Trustees

2016 – present
Federal Bar Association, EDNY Chapter
225 Old County Road
Melville, New York 11747
Board of Directors

2011 – 2019
Federal Magistrate Judges Association

P.O. Box 249
Stanardsville, Virginia 22973
Board of Directors, Officer

2006 – 2012
Federal Bar Council
150 Broadway, Suite 505
New York, New York 10038
Board of Trustees

1993 – 2000
Carroll Gardens Association
201 Columbia Street
Brooklyn, New York 11231
Officer

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 timely registered 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.

   Jack B. Weinstein Mediation Settlement Award, Federal Bar Association, Eastern District of New York Chapter (2016)

   Alumnus of the Year Award, Brooklyn Law School Alumni Association (2012)

   Diversity Leadership Award, LALSA, Brooklyn Law School (2012)

   Commander's Award for Civilian Service, United States Department of the Army (2005)

   New York University School of Law, *Journal of International Law and Politics*, Staff Member (1993)

   Brooklyn Law School
   Brooklyn Journal of International Law, Editor in Chief (1992)
   First Place, Nathan Burkan Memorial Writing Competition (1992)
   Oceana Publications Award (1992)
   Fellow, Center for the Study of International Business Law (1991 –1992)
   Moot Court Honor Society (1991 – 1992)
   Dean's Merit Scholarship (1990 – 1992)

Geraldo Rivera Scholarship (1990 and 1991)

Dean's List, Cornell University (Spring 1987, Spring 1988)

1st Place Team, Fordham Parliamentary Debate Tournament (1987)

6th Place Individual Speaker, Fordham Parliamentary Debate Tournament (1987)

Cornell Tradition Fellowship (1984 – 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 (2013 – present, intermittently)
Judicial Division, Standing Committee on Diversity, Roundtable on Diversity in Article I Judges (2015)
Coalition on Racial and Ethnic Justice (2013 – 2016)

Brooklyn Bar Association (2010 – 2013)

Federal Bar Association (2016 – present)

Federal Bar Council (1995 – present)
Second Circuit Courts Committee (2007 – 2011)
Inn of Court (2001 – 2006)

Federal Magistrate Judges Association (2006 – present)
Director (2010 – 2013)
Secretary (2014)
Treasurer (2015)
Vice President (2016)
President-Elect (2017)
President (2018)
Immediate Past President (2019)

Hispanic National Bar Association (2006 – present)

Judicial Friends Association (2006 – present)

Latino Judges Association (2006 – present)

Magistrate Judge Merit Selection Panel, EDNY (2000 – 2004)

New York City Bar (2007– 2014)
Federal Courts Committee (2007 – 2010)

New York Hispanic Bar Task Force on Judicial Selection (2007)

New York State Bar Association (approximately 1993 – 1994)

Puerto Rican Bar Association (1993 – present, intermittently)

United States Court of Appeals for the Second Circuit
Judicial Conference Planning Committee (2017 – 2019)

United States District Court, EDNY
Facility Security Sub-Committee (2008 – 2021)

10. **Bar and Court Admission**:

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

New York, 1993

There have been no lapses in membership.

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

United States Court of Appeals for the Second Circuit, 1999
United States District Court, Eastern District of New York, 1995
United States District Court, Southern District of New York, 1996

There have been no lapses in membership.

11. **Memberships**:

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

Brooklyn Law School Alumni Association (1992 – present, intermittently)

Carroll Gardens Association (1991 – 2000)
Secretary (1993 – 2000)

Cornell Alumni Association (1988 – present, intermittently)

Additionally, I serve on the University Undergraduate Parents Advisory Council (2020 – present) at my child's college. I can provide additional details to the Committee upon request

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of these organizations currently discriminates or previously 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.

"President's Message: Farewell Message," FMJA Bulletin (June 2019). Copy supplied.

"President's Message: FMJA Updates," FMJA Bulletin (Mar. 2019). Copy supplied.

"President's Message: Growing Together," FMJA Bulletin (Dec. 2018). Copy supplied.

"President's Message: Standing Together," FMJA Bulletin (Sept. 2018). Copy supplied.

"Hurricane" Sandy: A Case Study of The Eastern District of New York's Effort to Address Mass Litigation Resulting from The Effects of Climate Change, 5 Tex. A&M J. Prop. L. 157 (2018). Copy supplied.

Freelancers Reeling in Fight Over Online Rights, Nat'l L.J., Oct. 20, 1997, at C2. Copy supplied.

Enforcement of Foreign Court Judgments in the People's Republic of China: What The American Lawyer Needs to Know, 23 Brook. J. Int'l L. 241 (1997). Copy supplied.

Can Common Law Adequately Justify a Home-Taping Royalty Using Economic Efficiency Alone?: A Comparative View, 16 N.Y. Law Sch. J. Int'l & Comp. L. 235 (1996). Copy supplied.

Nauru v. Australia: The International Fiduciary Duty and the Settlement of Nauru's Claims for Rehabilitation of Its Phosphate Lands, 16 N.Y. Law Sch. J. Int'l & Comp. L. 1 (1996). Copy supplied.

Letter to the Editor, Nat'l L.J., Sept. 4, 1995, at A20. Copy supplied.

Taxation, Profit Repatriation and Exchange Control Issues Involved in Doing Business Abroad, 5 Int'l Quarterly 1 (1993). Copy supplied.

Medoil Corp. v. Citicorp.: Uncertainty Requires an In-Depth Inquiry into Forum Selection Clause Enforceability Issues, 17 Brook. J. Int'l L. 687 (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.

"Payment of United States Magistrate Judges if Judiciary Budgetary Resources are Depleted During a Lapse in Appropriations" – Comments on behalf of Federal Magistrate Judges Association to Administrative Office of the Courts, April 15, 2019, proposed changes to Sections 220.30.30 (d)–(g) of the Guide to Judiciary Policy (June 12, 2019). Copy supplied.

"One Case / One Judge" – Proposal for the Southern District of New York Regarding Direct Assignment to Magistrate Judges, Federal Courts Committee, New York City Bar (June 2010). Copy supplied.

Proposals for the 2010 Duke Conference Regarding the Federal Rules of Civil Procedure, Federal Courts Committee, New York City Bar (Apr. 2010). Copy supplied.

New York Hispanic Bar Task Force on Judicial Selection, Report and Recommendations (Jan. 2007). Copy supplied.

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

None

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

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

November 2, 2021: Guest Speaker, Adjunct Professors John Vagelatos's and Artemis Lekakis's Government Civil Litigation Seminar, Fordham Law School, virtual event. I answered questions from students about the federal courts and being a United States magistrate judge. I have no notes, transcript, or recording. The address of Fordham Law School is 150 West 62nd Street, New York, New York 10023.

October 27, 2021: Panelist, "Diversity on the Bench: Divergent Roads to the Judiciary," Diversity & Public Interest Law Series, Cornell Law School, virtual event. Video available at https://law-cornell.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=63c5df85-34ff-450c-b328-adce012f4455.

September 15, 2021: Presenter, "Almost everything you wanted to know about United States Magistrate Judges but were afraid to ask," Federal Bar Association, Young Lawyers Division, virtual event. Outline supplied.

April 15, 2021: Panelist, "Basics of Federal Civil Litigation," Long Island Hispanic Bar Association, virtual event. Outline supplied.

April 9, 2021: Panelist, Brown Bag Lunch, Federal Bar Council, First Decade Committee, virtual event. Magistrate Judge Ona Wang and I spoke about our paths to the bench, the role of a magistrate judge in civil and criminal matters, our particular practices, and other matters. I have no notes, transcript, or recording.

The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038.

March 11, 2021: Guest Speaker, Professor Maryellen Fullerton's Federal Courts Seminar, Brooklyn Law School, virtual event. I answered questions from students about federal jurisdiction, federal courts, and my practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

January 26, 2021: Guest Speaker, *Reflections on a Path to the Judiciary*, Nassau County Bar Association, Theodore Inns of Court, virtual event. I spoke about my career and path to the judiciary. I have no notes, transcript, or recording. The address of the Nassau County Bar Association is 15th and West Streets, Mineola, New York 11501.

November 20, 2020: Moderator, *Federal Criminal Practice in the Age of COVID*, Brooklyn Law School Chapter of Federal Bar Association: EDNY, virtual event. I was a moderator of a panel of prosecutors and defense counsel that discussed the challenges prosecutors, defense counsel, and judges face during the Covid pandemic. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201. The address of the Federal Bar Association, Eastern District Chapter, is 225 Old County Road, Melville, New York 11747.

October 20, 2020: Guest Speaker, Adjunct Professors John Vagelatos's and Artemis Lekakis's Government Civil Litigation Seminar, Fordham Law School, virtual event. I answered questions from students about the federal courts and being a United States magistrate judge. I have no notes, transcript, or recording. The address of Fordham Law School is 150 West 62nd Street, New York, New York 10023.

July 21, 2020: Guest Speaker, Professor Olivier Silvain's Privacy & Technology Law Seminar, Fordham Law School, virtual event. I answered questions from Professor Silvain and his students about issuing warrants, pen registers, trap and trace devices, and other investigatory devices, and their impact on privacy. I have no notes, transcript, or recording. The address of Fordham Law School is 150 West 62nd Street, New York, New York 10023.

July 6, 2020: Guest Speaker, Professor Olivier Silvain's Information Law Seminar, Fordham Law School, virtual event. I answered questions from Professor Silvain and his students about issuing warrants, pen registers, trap and trace devices, and other investigatory devices, and their impact on privacy. I have no notes, transcript, or recording. The address of Fordham Law School is 150 West 62nd Street, New York, New York 10023.

January 21, 2020: Guest Speaker, Focus Forward Project, Inc.'s graduation ceremony, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I gave brief congratulatory remarks to the graduates of this re-entry program. I have no notes, transcript, or recording. Focus Forward Project's address is P.O. Box 2892, Church Street Station, New York, New York 10008.

December 16, 2019: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to Cardozo High School students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

December 11, 2019: Guest Speaker, Nassau County Bar Association, Mineola, New York. I spoke about my career, path to the judiciary, and judicial practices. I have no notes, transcript, or recording. The address of the Nassau County Bar Association is 15th and West Streets, Mineola, New York 11501.

December 3, 2019: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to Judith S. Kaye High School students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

November 12, 2019: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to Curtis High School students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

October 17, 2019: Panelist, Eastern District Day in Residence, Brooklyn Law School, Brooklyn, New York. At the conclusion of the Day in Residence Program, other judges and I answered questions from the moderator and the audience about our profession. I have no notes, transcript, or recording. The

address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

September 27, 2019: Panelist, *Pathways to the Judiciary*, Hispanic National Bar Association, Judicial Council, New York, New York. I spoke on a panel of federal and state judges about requirements for becoming a judge, in my case how to become a U.S. magistrate judge, and our particular paths to the judiciary. I have no other notes, transcript, or recording. The address of the Hispanic National Bar Association is 2020 Pennsylvania Avenue, Northwest, Suite 279, Washington, DC 20006.

July 23, 2019: Panelist, *Fireside Chat with the Federal Judges*, National Bar Association, New York, New York. Along with District Judges Sterling Johnson and George Daniels, I answered questions from the moderator and the audience about a variety of topics including our backgrounds and our paths to the judiciary. I have no notes, transcript, or recording. The address of the National Bar Association is 1816 12th Street, Northwest, 4th Floor, Washington, DC 20009.

May 14, 2019: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to Origins High School students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

April 3, 2019: Panelist, *Civility Matters: Managing and Resisting the Temptation Toward Aggressive and Bad Behavior in Practice*, American Bar Association, Tort, Trial and Insurance Practice Section, New York, New York. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

March 5, 2019: Master of Ceremonies, "Celebrating Fifty Years of Magistrate Judges in the Federal Courts," Second Circuit Judicial Council, New York, New York. Opening remarks of Chief Judge Katzmann, which I delivered for him in his absence, and my opening and concluding remarks are supplied.

January 24, 2019: Guest Speaker, Brooklyn Law School Federal Courts Seminar taught by Professor Maryellen Fullerton, Theodore Roosevelt United States Courthouse, Brooklyn, New York. District Judges Glasser, Matsumoto and Irrizary, Magistrate Judges Gold and Pollak, and I answered questions from Professor Fullerton and her students about federal jurisdiction, federal courts, and our respective practices as judges. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

January 24, 2019: Panelist, *How to Become a Judge*, New York City Bar, New York, New York. I spoke about the process for becoming a United States Magistrate Judge. I have no notes, transcript, or recording. The address of the New York City Bar Association is 42 West 44th Street, New York, New York 10036.

December 11, 2018: Guest Speaker, Brown Bag Luncheon, Puerto Rican Bar Association, Theodore Roosevelt United States Courthouse, Brooklyn, New York. Spoke briefly about my career path, how to become a United States magistrate judge, and the role of magistrate judges within the Eastern District of New York. I have no notes, transcript, or recording. The address of the Puerto Rican Bar Association is c/o Steven M. Cordero, Esq., 11302 200th Street, Saint Albans, New York 11412.

November 28, 2018: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to New Utrect High School students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

November 26, 2018: Panelist, *How to Handle a Wage and Hour Case*, New York County Lawyers Association, New York, New York. I answered questions from moderator and other panelists about "the judicial perspective" of presiding over wage and hour cases in federal court. I have no notes, transcript, or recording. The address for the New York County Lawyers Association is 111 Broadway, New York, New York 10006.

November 13, 2018: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to Curtis High School students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

November 6, 2018: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a

law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

August 13, 2018: Presenter, Texas A&M University School of Law, Journal of Property Law: Natural Disaster Symposium, Fort Worth, Texas. Presentation and article supplied.

May 7, 2018: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to New Dorp High School students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

April 18, 2018: Co-Presenter with Professor Olivier Silvain, New York City High School Teachers Professional Day: *Privacy in the Digital Age: Social Media & Its Impact on Policing*, Court of Appeals for the Second Circuit, Committee on Civic Education, New York, New York. Professor Silvail and I presented to New York City public high school teachers about the Fourth Amendment and the development of case law relative to digital privacy through 2018. I have no notes, transcript, or recording. The address of the Court of Appeals for the Second Circuit is 40 Foley Square, New York, New York 10007.

April 10, 2018: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

February 17, 2018: Moot Court Judge, Cornell Law School, Ithaca, New York. I served as one of four judges for the final round of the Faust Rossi moot court competition. I have no notes, transcript, or recording. The address of Cornell Law School is Myron Taylor Hall, Ithaca, New York 14853.

January 31, 2018: Guest Speaker and Panelist, *Eastern District Day in Residence*, Fordham Law School, New York, New York. I answered questions from Professor Silvain and his students about issuing warrants, pen registers, trap and trace devices and other investigatory devices, and their impact on privacy. I also spoke on a panel with other Eastern District Judges at the conclusion of the Day in Residence program where we discussed life as judges and answered questions

from the moderator and students. I have no notes, transcript, or recording. The address of Fordham Law School is 150 West 62nd Street, New York, New York 10023.

September 28, 2017: Guest Speaker, Diversity Speaker Series, Debevoise & Plimpton LLP, New York, New York. I spoke about my path to the judiciary, my life as a judge, and answered questions from the moderators and audience. I have no notes, transcript, or recording. The address of Debevoise & Plimpton LLP is 919 Third Avenue, New York, New York 10022

May 17, 2017: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to Knowledge & Power Academy students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

April 25, 2017: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

March 23, 2017: Guest Speaker, Professor Maryellen Fullerton's Federal Courts Seminar, Brooklyn Law School, virtual event. I answered questions from students about federal jurisdiction, federal courts, and my practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

March 8, 2017: Panelist, Diversity Clerkship Panel, New York University School of Law, New York, New York. I spoke with students about the value clerking for a federal judge, how to obtain a clerkship, and what judges look for in law clerks. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

November 29, 2016: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New

York University School of Law is 40 Washington Square South, New York, New York 10012.

April 19, 2016: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

November 2, 2015: Guest Speaker, Fundamentals of Legal Drafting course taught by Adjunct Professor Erin Argo, Brooklyn Law School, Brooklyn, New York. I spoke about the importance of writing in the practice of law, and answered questions from students about federal jurisdiction, federal courts, and my practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

September 30, 2015: Panelist, BBNA Webinar: *Top Ten FLSA [Fair Labor Standards Act] Litigation Issues, 2015 Edition.* I was asked to provide the judicial perspective on several of the "Top Ten" FLSA litigation issues noted in the PowerPoint presentation supplied. I have no notes, transcript, or recording. The address for the Bureau of National Affairs, Inc. (BNA) is 3 Bethesda Metro Center, Bethesda, Maryland 20814.

May 14, 2015: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to Urban Assembly Academy of Government and Law students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

April 28, 2015: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

November 25, 2014: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic

Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

November 13, 2014: Guest Speaker, Professor Maryellen Fullerton's Federal Courts Seminar, Brooklyn Law School, virtual event. I answered questions from students about federal jurisdiction, federal courts, and my practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

October 27, 2014: Guest Speaker, Fundamentals of Legal Drafting course taught by Adjunct Professor Erin Argo, Brooklyn Law School, Brooklyn, New York. I spoke about the importance of writing in the practice of law, and answered questions from students about federal jurisdiction, federal courts, and my practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

October 9, 2014: Guest Speaker, Judicial Externship Seminar taught by Adjunct Professor Hon. Nicholas Garaufis, Columbia University School of Law, Theodore Roosevelt Courthouse, Brooklyn, New York. I answered questions from Judge Garaufis and his students about my role as a U.S. magistrate judge, my path to the judiciary, the Federal Rules of Civil Procedure, and how I select law clerks. I have no notes, transcript, or recording. The address of Columbia University School of Law is 435 West 116th Street, New York, New York 10027.

May 9, 2014: Panelist, *Superstorm Sandy Insurance Coverage Litigation*, Harris Martin, New York, New York. I spoke on a panel concerning judicial management of the "Hurricane Sandy" insurance coverage cases in the Eastern District of New York and the District of New Jersey. I have no notes, transcript, or recording. The address of Harris Martin Publishing is 920 Cassatt Road # 210, Berwyn, Pennsylvania 19312.

April 29, 2014: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

November 19, 2013: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic

Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

October 23, 2013: Guest Speaker, 25th Anniversary Celebration of Brooklyn Law School's Summer Legal Process (SLP) class, Brooklyn, New York. I delivered brief remarks on being a member of the inaugural SLP class in 1989. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

October 15, 2013: Panelist, *How to Handle a Wage and Hour Case*, New York County Lawyers Association, New York, New York. I answered questions from moderator and other panelists about "the judicial perspective" of presiding over wage and hour cases in federal court. I have no notes, transcript, or recording. The address for the New York County Lawyers Association is 111 Broadway, New York, New York 10006.

October 10, 2013: Guest Speaker, Adjunct Professor Ameet Kabrawala's Advanced Legal Writing Seminar, Brooklyn Law School, Brooklyn, New York. I spoke about the importance of writing in the practice of law, and answered questions from students about federal jurisdiction, federal courts, and my practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

September 17, 2013: Guest Speaker, Professor Maryellen Fullerton's Federal Courts Seminar, Brooklyn Law School, virtual event. I answered questions from students about federal jurisdiction, federal courts, and my practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

July 15, 2013: Panelist, Federal Clerkship Panel, Practicing Attorneys for Law Students Program, Inc., Orrick, Herrington & Sutcliffe, LLP, New York, New York. I spoke with students about the value of clerking for a federal judge, how to obtain a clerkship, and what judges look for in law clerks. I have no notes, transcript, or recording. Practicing Attorneys for Law Students Program, Inc. does not have a physical address.

May 29, 2013: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to Greenpoint Youth Court and Tottenville High School students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no

notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

May 8, 2013: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to Aviation High School students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

April 22, 2013: Guest Speaker, Federal Bar Council Public Service Committee's Court Visits Program with Justice Resource Center, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I spoke to Midwood High School students and answered their questions about federal courts, federal court jurisdiction, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038. The Justice Resource Center is located within Martin Luther King, Jr. High School, 122 Amsterdam Avenue, New York, New York 10023.

March 11, 2013: Guest Speaker, Adjunct Professor Ameet Kabrawala's Advanced Legal Writing Seminar, Brooklyn Law School, Brooklyn, New York. I spoke about the importance of writing in the practice of law, and answered questions from students about federal jurisdiction, federal courts, and my practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

February 12, 2013: Guest Speaker, Judicial Externship Seminar taught by Adjunct Professor Hon. Nicholas Garaufis, Columbia University School of Law, Theodore Roosevelt Courthouse, Brooklyn, New York. I answered questions from Judge Garaufis and his students about my role as a U.S. magistrate judge, my path to the judiciary, the Federal Rules of Civil Procedure, and how I select law clerks. I have no notes, transcript, or recording. The address of Columbia University School of Law is 435 West 116th Street, New York, New York 10027.

December 10, 2012: Moderator, *Your Client was Arrested by the Feds – Now What?: Initial Criminal Proceedings in Federal Court*, sponsored by Eastern District of New York Criminal Justice Act Panel, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I moderated a panel on the procedures by which criminal proceedings are initiated, the defendant's processing by the arresting agents, Pretrial Services and the U.S. Marshals, arraignment and bail

hearings, alternatives to detention and incarceration, and what happens if the defendant is remanded. I have no notes, transcript, or recording. The address of the Criminal Justice Act Panel is c/o Theodore Roosevelt Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201.

September 19, 2012: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

September 12, 2012: Guest Speaker, Professor Paul Radvany's Federal Court Clerk Externship Seminar, Fordham Law School, New York, New York. I spoke briefly about opinion writing and settlement conferences, and answered questions from students about those topics and my other practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Fordham Law School is 150 West 62nd Street, New York, New York 10023.

July 27, 2012: Panelist, Legal Outreach Program, Baker & Hostetler LLP, New York, New York. I joined a panel of lawyers, judges, and elected officials who described their careers to soon-to-be high school students. I have no notes, transcript, or recording. The address of Baker & Hostetler is 45 Rockefeller Plaza New York, New York 10111.

July 19, 2012: Panelist, Diversity Day Program, O'Melveny & Myers LLP, New York, New York. I joined a panel of lawyers, judges, and others who described their careers to soon-to-be high school students. I have no notes, transcript, or recording. The address of O'Melveny & Myers LLP is 7 Times Square, New York, New York 10036.

April 18, 2012: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

April 15, 2012: Guest Speaker, 7th Grade Social Studies Class taught by David Grosshandler, The Math & Science Exploratory School, Public School 447, Brooklyn, New York. I spoke about federal courts, my role as a U.S. magistrate judge, and my path to the judiciary. I have no notes, transcript, or recording. The address of P.S. 447 is 345 Dean Street, Brooklyn, New York 11217.

November 3, 2011: Co-guest speaker along with Hon. Steven Gold, *How Judges Think*, seminar taught by Brooklyn Law School professor Gary Minda, held in Judge Gold's courtroom, Eastern District of New York. We discussed our roles as magistrate judges and how we approach adjudication of cases. We also answered questions from Professor Minda and his students. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

October 18, 2011: Moderator, *Initial Criminal Proceedings in Federal Court: What Every Lawyer Needs to Know*, Brooklyn Bar Association, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I moderated a panel of practitioners concerning initial criminal proceedings in federal court. I have no notes, transcript, or recording. The address of the Brooklyn Bar Association is 123 Remsen Street, Brooklyn, New York 11201.

September 23, 2011: Guest Speaker, National Hispanic Heritage Month Celebration, Equal Employment Opportunity Commission (EEOC), New York, New York. I spoke with the EEOC about my life, family, and career. I have no notes, transcript, or recording. The address of the EEOC is 33 Whitehall Street, New York, New York 10004.

September 21, 2011: Guest Speaker, New York University School of Law, Adjunct Professor Michael J. Goldberger's Government Civil Litigation Clinic Seminar, Theodore Roosevelt United States Courthouse, Brooklyn, New York. I answered questions from students about the federal courts, federal court jurisdiction, being a law clerk, good and bad lawyering practices, and being a U.S. magistrate judge. I have no notes, transcript, or recording. The address of New York University School of Law is 40 Washington Square South, New York, New York 10012.

September 21, 2011: Guest Speaker, Visiting Assistant Professor Sarah E. Light's Environmental Dispute Resolution Seminar, Brooklyn Law School, Brooklyn, New York. I spoke to law school class about my approach to settlements and my case management practices. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

July 12, 2011: Guest Speaker, New York State Bar Association, Commercial & Federal Litigation Section, Nixon Peabody LLC, New York, New York. I delivered brief remarks at the Commercial Federal Litigation Section and answered questions from members about my experiences and practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Nixon Peabody LLC is 55 West 46th Street, Tower 46, New York, New York 10036.

April 27, 2011: Memorial Service for the late-Honorable David G. Trager, Brooklyn Law School, Brooklyn, New York. Prepared text supplied.

April 6, 2011: Keynote Address, Brooklyn Law Students for the Public Interest Alumni Dinner and Public Service Programs Office Award Ceremony, Brooklyn Law School, Brooklyn, New York. I delivered the keynote address to recipients of public service awards. I have no notes, transcript, or recording, but press coverage is supplied. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

December 4, 2010: Panelist, *How to Become a Judge*, New York City Bar, New York, New York. I spoke about the process for becoming a United States magistrate judge. I have no notes, transcript, or recording. The address of the New York City Bar Association is 42 West 44th Street, New York, New York 10036.

April 8, 2010: Guest Speaker, Professor Maryellen Fullerton's Federal Courts Seminar, Brooklyn Law School, virtual event. I answered questions from students about federal jurisdiction, federal courts, and my practices as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

November 19, 2009: Presenter, Presentation on the Federal Courts, Warwick Valley High School, Warwick, New York. I spoke with high school students about the jurisdiction of the federal courts and my role as a U.S. magistrate judge. I have no notes, transcript, or recording. The address of the Warwick Valley High School is 89 Sanfordville Road, Warwick, New York 10990.

November 7, 2009: Speaker, Opening Remarks for the Third Annual Visions for Tomorrow Workshop, What About the Children, Inc., Theodore Roosevelt United States Courthouse, Brooklyn, New York. I welcomed students to the Eastern District Court and described the work of the federal court. I have no notes, transcript, or recording. The address of What About the Children, Inc. is 249 Thomas Boyland Street, Suite 3-K, Brooklyn, New York 11233.

October 28, 2009: Panelist, The Art of Asserting Privilege in Federal Civil Litigation, Asian American Bar Association of New York, Kirkland & Ellis LLP, New York, New York. I offered my judicial perspective on assertions of attorney-client privilege and work product protection in federal court. I have no notes, transcript, or recording. The address of the Asian American Bar Association is 45 Rockefeller Plaza, 20th Floor, New York, New York 10111.

October 15, 2009: Guest Speaker, National Hispanic Heritage Month Celebration, National Labor Relations Board (NLRB), Brooklyn, New York. I spoke with NLRB about my life, family, and career. I have no notes, transcript, or recording. The address of the NLRB is 16 Court Street, Brooklyn, New York 11201.

September 23, 2009: Guest Speaker, National Hispanic Heritage Month Celebration, Equal Employment Opportunity Commission (EEOC), New York,

New York. I spoke with the EEOC about my life, family, and career. I have no notes, transcript, or recording. The address of the EEOC is 33 Whitehall Street, New York, New York 10004.

December 6, 2008: Panelist, *How to Become a Judge*, New York City Bar, New York, New York. I spoke about the process for becoming a United States magistrate judge. I have no notes, transcript, or recording. The address of the New York City Bar Association is 42 West 44th Street, New York, New York 10036.

November 8, 2008: Second Annual Visions for Tomorrow Workshop, What About the Children, Inc., Brooklyn Public Library, Grand Army Plaza, Brooklyn, New York. I welcomed students and encouraged them to make the most of their opportunities in life. I have no notes, transcript, or recording. The address of What About the Children, Inc. is 249 Thomas Boyland Street, Suite 3-K, Brooklyn, New York 11233.

October 24, 2008: Panelist, *The More Things Change . . . Recurring Discovery Problems in Employment Cases*, National Employment Lawyers Association, Yale Club, New York, New York. I answered questions from panelists and audience about my judicial practices and resolving discovery disputes in employment cases. I have no notes, transcript, or recording. The address of the National Employment Lawyers Association is 39 Broadway, Suite 2420, New York, New York 10006.

September 9, 2008: Panelist, *E-Discovery & the Rule 26(f) Conference: Strategic & Practical Considerations*, New York City Bar, New York, New York. I offered the judicial perspective on the Rule 26(f) conference and parties' e-discovery obligations under the Federal Rules of Civil Procedure. I have no notes, transcript, or recording. The address of the New York City Bar Association is 42 West 44th Street, New York, New York 10036.

June 21, 2007: Opening Speaker, Fifth Annual O'Melveny & Myers LLP Scholarship Awards Ceremony, New York, New York. I offered introductory and congratulatory remarks for the scholarship recipients. I have no notes, transcript, or recording. The address of O'Melveny & Myers LLP is 7 Times Square, New York, New York 10036.

December 2, 2006: Panelist, *How to Become a Judge*, New York City Bar, New York, New York. I spoke about the process for becoming a United States magistrate judge. I have no notes, transcript, or recording. The address of the New York City Bar Association is 42 West 44th Street, New York, New York 10036.
July 18, 2006: Panelist, *Taking & Defending Depositions*, New York City Bar Association, New York, New York. I offered my judicial perspective on taking and defending depositions in a question-and-answer format. I have no notes, transcript, or recording. The address of the New York City Bar Association is 42 West 44th Street, New York, New York 10036.

June 1, 2006: Speaker, Investiture of Ramon E. Reyes, Jr., Brooklyn, New York. Uncorrected transcript supplied.

March 5, 1999: Speaker, *Fifth Annual Career Conversations Fair*, Brooklyn Law School, Brooklyn, New York. I spoke about my career path from legislative attorney to Assistant U.S. Attorney. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

April 8, 1992: Panelist, *Writing Competition Workshop*, Practicing Attorneys for Law Students Program, Inc, New York, New York. I spoke about how to prepare for the first-year writing competition at most law schools. I have no notes, transcript, or recording. Practicing Attorneys for Law Students Program, Inc. does not have a physical address.

In the past 16 years as a U.S. magistrate judge I have performed at least 143 oath ceremonies (naturalization ceremonies and attorney admissions). My script for naturalization ceremonies is supplied. I do not have a script for attorney admissions.

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.

Magistrate Judges: The Selection Process, Administrative Office of the United States Courts (June 5, 2019). Video available at https://www.youtube.com/watch?v=kU_jV_x-xJM.

"Brooklyn Law School Appoints Judge Ramon E. Reyes, Jr. '92 To Board Of Trustees Brooklyn Law School," Health Policy and Law Daily, NewsRx LLC (Dec. 27, 2018). Copy supplied

Magistrate Judges: Serving the Judiciary and the Public, Administrative Office of the Courts (Oct. 29, 2018). Video available at https://www.youtube.com/watch?v=v81yi5GbECc.

Sam Newhouse, Obituary: David Trager, Brooklyn Eagle (Jan. 2011). I am unable to locate a copy.

"Picture Your Future," *In Your Interest*, Brooklyn Law School Public Service Programs Office (Dec. 3, 2009). Copy supplied.

Class Notes, Brooklyn Law School (Fall 2006). Copy supplied.

"The Case for Clerking," Law Notes, Brooklyn Law School, Law Notes (Summer 2005). Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Since 2006 I have served as a magistrate judge for the United States District Court for the Eastern District of New York. This is an appointed position. The jurisdiction of the United States district courts is prescribed by Congress in 28 U.S.C. §§ 1330 – 1369. The authority of United States magistrate judges is prescribed by Congress in 28 U.S.C. § 636.

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

I have presided over 33 trials: 15 jury trials and 18 bench trials.

i. Of these cases, approximately what percent were:

jury trials:	45%
bench trials:	55%

ii. Of these cases, approximately what percent were:

civil proceedings:	94%
criminal proceedings:	6%

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

See attached list of opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature 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. *Bauta v. Greyhound Lines, Inc.*, No. 14-CV-3725 (RER), 2020 WL 1237123 (E.D.N.Y. Mar. 13, 2020); *see also* 2020 WL 1227157 (E.D.N.Y. Mar. 13, 2020); 2019 WL 8060183 (E.D.N.Y. Jan. 1, 2019); 2019 WL 8060181 (E.D.N.Y. June 17, 2019); 2019 WL 6682318 (E.D.N.Y. Dec. 6, 2019); 2018 WL 10466841 (E.D.N.Y. July 2, 2018); 2016 WL 11670643 (E.D.N.Y. July 11, 2016)

This was an action for personal injuries sustained in a serious bus accident. The parties consented to my jurisdiction to preside over the case for all purposes pursuant to 28 U.S.C. § 636(c). I gave collateral estoppel effect on liability and punitive damages to a Pennsylvania state court action involving the same accident. I held separate trials on the amount of compensatory and punitive damages and the jury returned verdicts in plaintiff's favor for several million dollars. The parties settled after extensive briefing on a number of post-trial issues.

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2. *Hernandez v. NJK Contr., Inc.*, No. 09-CV-4812 (RER), 2015 WL 5178119 (E.D.N.Y. Sept. 3, 2015); *see also* 2015 WL 1966355 (E.D.N.Y. May 1, 2015)

This was a multi-plaintiff wage and hour case under the Fair Labor Standards Act and related New York and New Jersey labor laws. The parties consented to my jurisdiction to preside over the case for all purposes pursuant to 28 U.S.C. § 636(c). After a four-day bench trial, defendants were found jointly and severally liable for more than $400,000 in unpaid wages, pre- and post-judgment interest, as well as more than $400,000 in attorney's fees.

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3. *In re: Hurricane Sandy Cases*, 14-MC-41 (E.D.N.Y.): *see also* 2014 WL 12661272 (E.D.N.Y. Dec. 12, 2014); 2014 WL 7011069 (E.D.N.Y. Dec. 8, 2014); 2014 U.S. Dist. LEXIS 168814 (E.D.N.Y. Dec. 2, 2014); 2014 WL 12834832 (E.D.N.Y. June 11, 2014); 2014 WL 3489852 (E.D.N.Y. June 4, 2014); 2014 WL 1379612 (E.D.N.Y. Mar. 28, 2014)

This is a master calendar of approximately 1,500 individual insurance cases under the National Flood Insurance Act, 42 U.S.C. §§ 4001–4127 and New York state law resulting from super storm Sandy in October 2012. Magistrate Judges Cheryl Pollak, Gary Brown, and I were tasked by the Eastern District Board of Judges with developing a case management system to expeditiously process and resolve these cases. With input from the parties, we developed such a system, including an innovative, specifically-dedicated mediation program. This system facilitated the expeditious resolution of virtually all of these cases well beyond the temporal expectations of the parties and the court. Magistrate Judges Pollak, Brown, and I were integrally involved in resolving these cases through the implementation of the case management system and the handling of hundreds of cases each, including convening case management and settlement conferences.

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4. *Wells Fargo Bank, N.A. v. Nat'l Gasoline, Inc.*, No. 10-CV-1762 (RER), 2013 WL 12357753 (E.D.N.Y. Dec. 31, 2013); *see also* 2013 WL 1822288 (E.D.N.Y. Apr. 30, 2013), *aff'd*, 577 F. App'x 58 (2d Cir. 2014); 2013 WL 1686458 (E.D.N.Y. Apr. 18, 2013); 2013 WL 696651 (E.D.N.Y. Feb. 26, 2013); 2013 WL 168079 (E.D.N.Y. Jan. 16, 2013)

Lender brought breach of contract and conversion claims against a corporate borrower, related entities, and individual shareholders, claiming that the defendants diverted accounts receivable, which was security for a line of credit, into other accounts. The parties consented to my jurisdiction to preside over the case for all purposes pursuant to 28 U.S.C. § 636(c). Following grant of plaintiff's motion for summary judgment as to liability, I held a bench trial as to joint and several liability and damages. The trial resulted in findings of joint and several liability as to many defendants and damages of nearly $7 million. Both summary judgment and trial findings were affirmed on appeal.

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5. *In re: American Express Anti-Steering Rules Antitrust Litigation (No. II)*, 11-MD-2221 (NGG) (RER) (E.D.N.Y.); *United States of America v. American Express Company*, 10-CV-4496 (NGG) (RER) (E.D.N.Y.); *see also* 2012 WL 13098456 (E.D.N.Y. Nov. 16, 2012); 2012 WL 2885367 (E.D.N.Y. July 13, 2012); 2012 WL 13103525 (E.D.N.Y. July 13, 2012); 2011 WL 13073683 (E.D.N.Y. July 29, 2011)

These are a consolidated multi-district litigation and a direct action by the United States against defendants for violation of the antitrust laws in relation to defendants' use of purportedly "anti-steering" merchant service agreements that prevent merchants who accept certain payment cards from steering customers to alternative card brands. I presided over all pre-trial discovery and related proceedings and issued several rulings thereon. The cases have been resolved in litigation with the district judge, and through the Court of Appeals for the Second Circuit and Supreme Court.

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6. *Artica v. J.B. Custom Masonry & Concrete, Inc.*, Nos. 09-CV-3796 (RER), 11–CV–0842 (RER), 2012 WL 11945654 (E.D.N.Y. July 16, 2012); *see also* 2012 WL 13102524 (E.D.N.Y. June 4, 2012); 2011 WL 13295445 (E.D.N.Y. Oct. 21, 2011)

A group of more than 20 plaintiffs brought suit against several related entities and individuals for unpaid wages and retaliation under the Fair Labor Standards Act and New York Labor Law, and breach of contract and assault and battery under state common law. The parties consented to my jurisdiction to preside over the case for all purposes pursuant to 28 U.S.C. § 636(c). Following contentious pre-trial proceedings the case proceeded to a jury trial. The jury returned verdicts in favor of plaintiffs on nearly all claims, and made specific findings of fact on liability and damages. Following submission of proposed damages calculations and post-trial briefing, judgment was entered against defendants for several million dollars. Subsequent post trial proceedings occurred for enforcement of the judgment. Ultimately, the case settled.

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7. *Castro v. City of New York*, No. 06-CV-2253 (RER), 2010 WL 889865 (E.D.N.Y. Mar. 6, 2010), *aff'd*, 413 F. App'x 364 (2d Cir. 2011)

Plaintiff, a former New York City police officer, brought suit against the City of New York under, *inter alia*, 42 U.S.C. §§ 1981, 1983, and 42 U.S.C. § 2000e, *et seq.*, for its refusal to hire him as a sanitation worker in retaliation for his involvement as a named plaintiff in a prior class action against the New York Police Department. The parties consented to my jurisdiction to preside over the case for all purposes pursuant to 28 U.S.C. § 636(c). Following discovery, a jury returned a verdict in plaintiff's favor and awarded him $73,000 in damages.

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8. *Lewis v. City of New York*, No. 06-CV-516 (RER), 689 F. Supp. 2d 417 (E.D.N.Y. 2010); *see also* 2009 WL 5125484 (E.D.N.Y. Mar. 12, 2009)

Plaintiff brought this action against defendants for excessive force under 42 U.S.C. § 1983 and battery under New York law. Plaintiff alleged that defendant police officers subjected him to excessive force and battery during his arrest, which rendered him paraplegic. The parties consented to my jurisdiction to preside over the case for all purposes pursuant to 28 U.S.C. § 636 (c). Following discovery, a jury found only the City vicariously liable for the battery committed

by a nonparty police officer and awarded plaintiff more than $4 million in compensatory damages.

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9. *Wentworth v. Hedson*, No. 06-CVC-3373 (RER), 2008 WL 687077 (E.D.N.Y. Mar. 7, 2008); *see also* 248 F.R.D. 123 (E.D.N.Y. 2008); 248 F.R.D. 121 (E.D.N.Y. 2008); 493 F. Supp. 2d 559 (E.D.N.Y. 2007)

Plaintiffs brought claims under the Fair Housing Act of 1968, 42 U.S.C. §§ 3604(c) and 3617, the Civil Rights Act of 1866, 42 U.S.C. § 1982, and the New York Executive Law § 296. Plaintiffs claimed that defendants unlawfully interfered with their housing rights by harassing them, disturbing the quiet enjoyment of their apartment, and instituting eviction proceedings against them because they associated with people of color. The parties consented to my jurisdiction to preside over the case for all purposes pursuant to 28 U.S.C. § 636(c). Following discovery and the denial of summary judgment, the case proceeded to a jury trial. The jury found against plaintiffs on their claims and in favor of defendants on their counterclaims, awarding defendants $1 each in nominal damages. I subsequently denied defendants' request for attorneys' fees.

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10. *Patsy's Italian Rest., Inc. v. Banas et al.*, Nos. 06–CV–729 (RER), 06–CV–5857 (RER), 575 F. Supp. 2d 427 (E.D.N.Y. 2008), *aff'd*, 658 F.3d 254 (2d. Cir. 2011)

Plaintiff, an iconic New York City restaurant utilizing the mark "Patsy's," brought suit for trademark infringement and related claims against a similarly iconic New York City pizzeria also utilizing the mark "Patsy's" in relation to itself and certain franchised locations. Defendants raised counterclaims and sought cancellation of plaintiff's registered trademarks. The parties consented to my jurisdiction to preside over the case for all purposes pursuant to 28 U.S.C. § 636 (c). Following a trial in which a jury decided certain factual issues, I issued an extensive decision on post trial motions, which included certain injunctive relief. I cancelled two of plaintiff's federal trademark registrations, prohibited the U.S. Patent and Trademark Office from restoring one of defendant's trademark registrations, and enjoined both parties from using the trademark "Patsy's" alone in any advertising, signs, menus or anything similarly associated with their establishments. The U.S. Court of Appeals for the Second Circuit affirmed my decision in all respects.

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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. *Hasemann v. Gerber Prods. Co.*, Nos. 15-CV-2995, 16-CV-1153, 17-CV-93 (MKB) (RER), 2019 WL 2250687 (E.D.N.Y. Feb. 20, 2019), *R & R adopted as modified*, 331 F.R.D. 239 (E.D.N.Y. 2019)

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2. *United States v. Riccardi*, No. 12-CR-447 (ERK) (RER) (E.D.N.Y. Feb. 4, 2020), *R & R adopted*, (E.D.N.Y. Apr. 4, 2020), *aff'd*, 859 F. App'x 590 (2d Cir. 2021). Copies of unpublished decisions supplied.

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3. *N.K. v. Abbott Laboratories*, No. 14-CV-4875 (RER), 2017 WL 2241507 (E.D.N.Y. May 22, 2017), *aff'd*, 731 F. App'x 24 (2d Cir. 2018), *cert. denied*, 139 S. Ct. 794 (2019)

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4. *United States v. Browne*, No. 11-CR-449 (SJ) (RER), 2016 WL 11263165 (E.D.N.Y. Dec. 2, 2016), *R & R adopted*, 2018 WL 418900 (E.D.N.Y. Jan. 16, 2018), *aff'd*, 771 F. App'x 81 (2d Cir. 2019), *cert. denied*, 141 S. Ct. 874 (2020)

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5. *New York State Citizens' Coal. For Child. v. Velez*, No. 10-CV-3485 (WFK) (RER), 2016 WL 11263164 (E.D.N.Y. Nov. 7, 2016), *R & R adopted*, 2017 WL 4402461 (E.D.N.Y. Sept. 29, 2017), *aff'd*, 922 F.3d 69 (2d Cir. 2019), *reh'g en banc denied*, 935 F.3d 56 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 956 (2020)

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6. *United States v. Parker*, No. 12-CR-120 (ERK) (RER) (E.D.N.Y. Sept. 9, 2016), *R & R adopted in part*, (E.D.N.Y. Jan. 5, 2017). Decisions supplied.

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7. *Mui v. United States*, No. 99-CV-3627 (SJ) (RER), 2013 WL 6330661 (E.D.N.Y. Dec. 5, 2013), *appeal dismissed*, 2014 WL 12971964 (2d Cir. Aug. 5, 2014), *cert. denied*, 574 U.S. 1109 (2015)

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8. *Web Tracking Solutions, L.L.C. v. Google, Inc.*, No. 08-CV-3139 (RRM) (RER), 2011 WL 3418323 (E.D.N.Y. July 27, 2011), *R & R adopted*, 2011 WL 3418311 (E.D.N.Y. Aug. 3, 2011), *appeal dismissed*, 12-1368 (Fed. Cir. Aug. 7, 2012)

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9. *Sergeants Benev. Ass'n Health and Welfare Fund v. Sanofi-Aventis U.S. LLP*, No. 08-CV-179 (SLT) (RER), 2011 WL 824607 (E.D.N.Y. Feb. 16, 2011), *R & R adopted*, 2011 WL 1326365 (E.D.N.Y. Mar. 30, 2011) and 2012 WL 4336218 (E.D.N.Y. Sept. 17, 2012), *R & R adopted in part*, 20 F. Supp. 3d 305 (E.D.N.Y. May 12, 2014), *aff'd*, 806 F.3d 71 (2d Cir. 2015), *cert. denied*, 137 S. Ct. 140 (2016)

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

N.K. v. Abbott Laboratories, No. 14-CV-4875 (RER), 2017 WL 2241507 (E.D.N.Y. May 22, 2017), *aff'd*, 731 F. App'x 24 (2d Cir. 2018), *cert. denied*, 139 S. Ct. 794 (2019)

United States v. Browne, No. 11-CR-449 (SJ) (RER), 2016 WL 11263165 (E.D.N.Y. Dec. 2, 2016), *R & R adopted*, 2018 WL 418900 (E.D.N.Y. Jan. 16, 2018), *aff'd sub nom. United States v. Cean*, 771 F. App'x 81 (2d Cir. 2019), *cert. denied*, 141 S. Ct. 874 (2020)

New York State Citizens' Coal. For Child. v. Velez, No. 10-CV-3485 (WFK) (RER), 2016 WL 11263164 (E.D.N.Y. Nov. 7, 2016), *R & R adopted*, 2017 WL 4402461 (E.D.N.Y. Sept. 29, 2017), *aff'd sub nom. N.Y. State Citizens' Coalition for Children v. Poole*, 922 F.3d 69 (2d Cir. 2019), *reh'g en banc denied*, 935 F.3d 56 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 956 (2020)

Mui v. United States, No. 99-CV-3627 (SJ) (RER), 2013 WL 6330661 (E.D.N.Y. Dec. 5, 2013), *appeal dismissed*, 2014 WL 12971964 (2d Cir. Aug. 5, 2014), *cert. denied*, 574 U.S. 1109 (2015)

Sergeants Benev. Ass'n Health and Welfare Fund v. Sanofi-Aventis U.S. LLP, No. 08-CV-179 (SLT) (RER), 2011 WL 824607 (E.D.N.Y. Feb. 16, 2011), *R & R adopted*, 2011 WL 1326365 (E.D.N.Y. Mar. 30, 2011) and 2012 WL 4336218 (E.D.N.Y. Sept. 17, 2012), *R & R adopted in part*, 20 F. Supp. 3d 305 (E.D.N.Y.

May 12, 2014), *aff'd*, 806 F.3d 71 (2d Cir. 2015), *cert. denied*, 137 S. Ct. 140 (2016)

Johnson v. Bellnier, No. 09–CV–00381 (KAM)(RER), 2010 WL 7100915 (E.D.N.Y. Nov. 8, 2010), *R & R adopted in part and modified in part*, 2011 WL 3235708 (E.D.N.Y. July 27, 2011), *rev'd*, 508 F. App'x 23 (2d Cir. 2013), *cert. denied sub nom. Johnson v. Chappius*, 570 U.S. 922 (2013)

Armatas v. Maroulleti, No. 08-CV-310 (SJF)(RER), 2010 WL 4340437 (E.D.N.Y. Oct. 19, 2010), *R & R adopted in part*, 2010 WL 4340334 (E.D.N.Y. Oct. 22, 2010), *aff'd*, 484 F. App'x 576 (2d Cir. 2012), *cert. denied*, 569 U.S. 904 (2013)

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have searched my files and electronic databases concerning the more than 600 reports and recommendations, opinions, and other substantive orders that I have issued. The following are those cases in which I was either reversed or where my decisions were affirmed but with significant criticism.

Pryce v. Progressive Corp., No. 19-CV-1467 (RJD) (RER), 2022 WL 1085489 (E.D.N.Y. Feb. 17, 2022), *R & R adopted as modified*, 2022 WL 969740 (E.D.N.Y. Mar. 31, 2022). Putative class action for breach of contract and violation of New York General Business Law § 349 in relation to miscalculation of automobile insurance policy benefits under New York's Comprehensive Motor Vehicle Insurance Reparations Act, N.Y. Ins. L. §§ 5101, *et seq.* I issued a report recommending, *inter alia*, that plaintiff's motion for class certification be granted. While the district judge adopted my "through and well-reasoned" report and recommendation in nearly all respects, he modified the recommended class definition to address defendant's written objection to the report.

Gonzalez v. Victoria G'S Pizzeria LLC, No. 19-CV-6996 (DLI) (RER), 2021 WL 8316282 (E.D.N.Y. Nov. 12, 2021), *R & R adopted as modified*, (E.D.N.Y. Order dated Dec. 22, 2021). Action for unpaid wages under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* I issued a report recommending that the settlement agreement be approved, but that the amount of attorney's fees be reduced. While the district judge adopted my report and recommendation to grant plaintiff's motion for settlement approval, the district judge modified the attorneys' fees and costs awarded to reflect parties' agreement, rather than the amount I had recommended. Copy supplied.

Am. Empire Surplus Lines Ins. Co. v. Concord Restoration, No. 20-CV-2341

(RPK) (RER), 2021 WL 7830142 (E.D.N.Y. July 28, 2021), *R & R adopted*, 2022 WL 950432 (E.D.N.Y. Mar. 30, 2022). Action for damages and declaratory relief for failure to pay insurance premiums as required by contract. I issued a report recommending that plaintiff's motion for default judgment be denied or in the alternative, granted only as to liability with the matter referred back to me for an inquest on damages. While the district judge adopted my recommendation to deny plaintiff's motion for default judgment, she found that defendant's default was willful, which I had found it was not.

U.S. v. Rufai, No. 21-MJ-598 (JRC) (E.D.N.Y. May 25, 2021). This was a criminal action for removal to the Western District of Washington pursuant to Rule 5 of the Federal Rules of Criminal Procedure. Defendant was charged with wire fraud. During a bail hearing, I granted the defendant's request for release on a $300,000 bond with strict conditions and one surety, finding that the risk of flight was substantially outweighed by the strict conditions of release. I stayed the release to permit the government to appeal to a district judge in the prosecuting district. Ultimately, the district judge in the Western District of Washington reversed my bail determination, finding that the risk of flight was not outweighed by the combination of conditions of proposed release. Copies supplied.

Rodriguez v. Cricket Wireless LLC, No. 20-CV-1596 (LDH) (RER), 2021 WL 7906565 (E.D.N.Y. Apr. 20, 2021), *R & R adopted in part*, (E.D.N.Y. Order dated Sept. 24, 2021). Action for unpaid wages under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq*. I issued a report recommending that the court approve and enforce the settlement reached by parties through court-annexed mediation. The district judge adopted my recommendation to approve the settlement, but rejected my recommendation to enforce the terms of the settlement. The district judge noted that plaintiffs had not identified any breach, nor could they prior to the court's approval of the settlement agreement. Copy supplied.

Raja v. Burns, No. 19-CV-1328 (AMD)(RER), 2021 WL 1394638 (E.D.N.Y. Feb. 2, 2021), *R & R adopted*, 2021 WL 1099931 (E.D.N.Y. Mar. 23, 2021), *vacated and remanded*, 2022 WL 3022527 (2d Cir. Aug. 1, 2022). Action asserting claims under 42 U.S.C. § 1983. After district judge granted partial summary judgment in plaintiff's favor, she referred plaintiff's motion for attorney's fees to me for a report and recommendation. I recommended that plaintiff's motion be granted in part, and that he be awarded attorney's fees reduced by 40 percent from what he requested. The district judge adopted in full the report and recommendation. On appeal the Second Circuit vacated and remanded, finding the recommendation to reduce the attorney's fees by 40 percent to be an abuse of discretion.

Wells Fargo Bank, N.A. v. Krenzen Auto Inc., No. 19-CV-5329 (E.D.N.Y. Dec. 20, 2019), *sua sponte R & R not adopted*, (E.D.N.Y. Dec. 27, 2019). Interpleader action pursuant to 28 U.S.C. § 1335. I issued a report recommending that this case

be dismissed for plaintiff's failure to prosecute and failure to follow the scheduling order. The district judge declined to adopt my sua sponte report and recommendation based on plaintiff's subsequent submission which established that it was making efforts to prosecute its case. Copies supplied.

Morales v. United States, No. 18-CV-4247 (CBA) (RER), 2020 WL 4504655 (E.D.N.Y. Aug. 5, 2020), *remanded in part*, 2020 WL 6799681 (E.D.N.Y. Nov. 19, 2020). Action for damages under the Federal Tort Claims Act, 28 U.S.C. § 1346(b) and *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). I issued an order granting in part plaintiff's motion to compel disclosure of certain documents protected by law enforcement privilege and denying the motion to strip those documents of their designation as "confidential" under a stipulated protective order to be used in a related state court action. Although finding that my discovery order was neither clearly erroneous nor contrary to law as to the motion to compel, the district judge remanded the matter to me for clarification of whether defendants satisfied their burden to sustain the continued confidentiality designations as to those documents.

MJC Supply, LLC v. Powis, No. 18-CV-1539 (PKC) (RER), 2019 WL 2271789 (E.D.N.Y. Feb. 20, 2019), *R & R adopted in part*, 2019 WL 1429625 (E.D.N.Y. Mar. 29, 2019). Action for breach of contract arising out of a personal guarantee. I issued a report recommending that the defendant's motion for vacatur of default be granted, the plaintiff's cross-motion for default judgment be denied, and that the action be dismissed without prejudice for lack of personal jurisdiction due to insufficient service of process. The district judge adopted my recommendations except as to dismissal, and instead gave plaintiff sixty days to cure its defective service of process on defendant.

Hasemann v. Gerber Prods. Co., Nos. 15-CV-2995, 16-CV-1153, 17-CV-93 (MKB) (RER), 2019 WL 2250687 (E.D.N.Y. Feb. 20, 2019), *R & R adopted as modified*, 331 F.R.D. 239 (E.D.N.Y. Mar. 31, 2019). Putative class action for false, deceptive, and unfair business practices under various state laws in relation to advertising and marketing misrepresentations of defendant's infant formula products. I issued a report recommending that the proposed Florida and New York Sub-Classes be certified but that certification of the proposed North Carolina and Multistate Sub-Classes be denied. While the district judge adopted the recommendation that plaintiffs' motion for class certification be granted in part and denied in part, she modified the proposed class definitions for two of the recommended subclasses.

Lopez v. Cajmant LLC, No. 15-CV-593 (ENV) (RER) (E.D.N.Y. Nov. 8, 2018), *R & R adopted in part*, (E.D.N.Y. Order dated Jan. 11, 2019). Action for unpaid wages under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* I issued a report recommending that a settlement agreement be approved. The district judge adopted my report, but, based on discrepancies between plaintiff's letter motion

for settlement approval and the settlement agreement itself, reduced the amount approved for attorney's fees and costs, as well as for duplicative and excessive costs. Copies supplied.

U.S. Underwriters Ins. Co. v. Orion Plumbing & Heating Corp., 416 F. Supp. 3d 184 (E.D.N.Y. 2018) (adopting report and recommendation in full and dismissing action), *aff'd in part vacated in part*, 765 F. App'x 534 (2d Cir. 2019). Action seeking rescission of an insurance policy and declaratory relief. I issued a report recommending that plaintiff's motion for default judgment be denied and that plaintiff's claims be dismissed for lack of subject matter jurisdiction. The district judge adopted the recommendation, *inter alia*, to dismiss the rescission claim for lack of an actual case or controversy under Article III of the Constitution. The Court of Appeals affirmed in all respects, except as to the rescission claim, finding that the claim as stated presented an actual case or controversy under Article III.

Harte v. Ocwen Fin. Corp., No. 13-CV-5410, 2018 WL 1830811 (E.D.N.Y. Feb. 8, 2018), *R & R adopted in part*, 2018 WL 1559766 (E.D.N.Y. Mar. 30, 2018). Putative class action for violation of New York statutory and common laws in relation to misrepresentations to mortgage borrowers seeking loan modifications. I issued a report recommending that defendant's motion for summary judgment be granted in part and denied in part, and that plaintiff's motion for class certification be granted in part and denied in part. The district court adopted the recommendation to deny defendant's motion for summary judgment as to plaintiff's promissory estoppel and New York General Business Law § 349 claims for failure to provide pre-foreclosure notice, but reserved decision on defendant's motion for summary judgment as to GBL § 349 "dual-tracking" claim and as to plaintiff's motion for class certification, contrary to the recommendation.

Poole v. N.Y. Police Dep't, No. 15-CV-6033 (CBA) (RER), 2018 WL 4635733 (E.D.N.Y. Jan. 9, 2018), *R & R not adopted*, 2018 WL 3970895 (E.D.N.Y. Aug. 17, 2018). Action under 42 U.S.C. § 1983 alleging unlawful search and false arrest. I issued a report recommending that the case be dismissed based upon the plaintiff's failure to prosecute his claims and failure to participate in discovery. Although the district judge found that my recommendation to dismiss plaintiff's complaint for failure to prosecute and follow a court order "was likely correct at the time it was issued," she declined to adopt it based on plaintiff's argument that the injuries he sustained in the underlying incident caused him to miss the deadlines and court appearances that formed the basis for the recommended dismissal.

Ctr. for Discovery, Inc. v. D.P., No. 16-CV-3936, 2017 WL 9674514 (E.D.N.Y. July 17, 2017), *R & R adopted*, 2018 WL 1583971 (E.D.N.Y. Mar. 31, 2018). Action seeking injunctive relief under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, *et seq*. I issued a report recommending that plaintiff's

motion to dismiss be granted with prejudice and that its motion to dismiss defendant's counterclaims be granted without prejudice. The district court adopted the report and recommendation in its entirety as to the judgment, but, without criticizing the reasoning applied in the report, employed additional or different reasoning for dismissal as to three counterclaims and the denial of attorneys' fees.

LG Capital Funding, LLC v. On4 Communs., Inc., No. 16-CV-6943, 2017 U.S. Dist. LEXIS 117201 (E.D.N.Y. July 25, 2017) and 2018 U.S. Dist. LEXIS 8353 (E.D.N.Y. Jan. 17, 2018), *R & R adopted as modified*, 2018 U.S. Dist. LEXIS 164370 (E.D.N.Y. Sept. 9, 2018). Action for breach of contract and unjust enrichment for failure to deliver shares of common stock. I issued reports recommending that plaintiff's motion for default judgment be granted and that defendant's subsequent motion to set aside default be denied. The district judge adopted the reports, but modified the recommended damages award based on an incorrect calculation of lost profits in the report.

Courchevel 1850 LLC v. Pinto-Bedoya, No. 16-CV-6716 (NGG)(RER), 2017 WL 8793381 (E.D.N.Y. May 11, 2017), *R & R adopted in part*, 2017 WL 5157451 (E.D.N.Y. Nov. 7, 2017). Action seeking foreclosure and sale of property pursuant to New York Real Property Actions and Proceedings Law §§ 1301, *et seq.* I issued a report recommending that plaintiff's motion for default judgment be granted and a deficiency judgment be entered against the defendant. The district judge found no clear error in my conclusions that plaintiff established entitlement to default judgment, but held that the recommendation to grant a deficiency judgment in foreclosure action would be premature before filing a separate motion after the foreclosure sale had been consummated.

Ansoralli v. CVS Pharmacy, Inc., No. 16-CV-1506 (CBA) (RER), 2017 WL 570767 (E.D.N.Y. Feb. 13, 2017), *rev'd*, 2017 WL 8676437 (E.D.N.Y. July 24, 2017). Action alleging violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201–219 and New York Labor Law. I granted the plaintiff's motion to conditionally certify a collective action under 29 U.S.C. § 216(b). The district court sustained defendant's objection under Federal Rule of Civil Procedure 72(a) to an order setting a six-year notice period in the collective action notice, finding that the circumstances of case and authority in Circuit supported using a three-year notice period instead.

U.S. v. Zhang, 16-CR-614 (AMD) (E.D.N.Y. Nov. 17, 2016). Defendant was charged with, *inter alia*, forced labor and forced labor conspiracy. Following an extensive detention hearing I ordered defendant released on a $10 million bond secured by properties, multiple sureties, and stringent conditions, finding that any risk of flight was outweighed by such conditions. I stayed defendant's release to permit the government to appeal to a district judge. Upon appeal, my decision granting bail was reversed by the district judge without elaboration. Copies supplied.

Berlyavsky v. N.Y.C. Dep't of Envt'l Prot., No. 14-CV-3217 (KAM) (RER), 2015 WL 5772266 (E.D.N.Y. Aug. 28, 2015), *R & R adopted as modified*, 2015 WL 5772255 (E.D.N.Y. Sept. 30, 2015), *reconsideration denied*, 2016 WL 1383486 (E.D.N.Y. Apr. 7, 2016), *aff'd*, 671 F. App'x 836 (2d Cir. 2016). Religion, age, and national origin discrimination and retaliation action under various federal, state, and local laws. I issued a report recommending that defendants' motions to dismiss be granted but that the plaintiff be granted one final opportunity to amend his complaint to assert viable claims. Although the district judge adopted the recommendation that pro se plaintiff's second amended complaint be dismissed under Federal Rule of Civil Procedure 12(b)(6), she declined to adopt the recommendation to grant plaintiff a final opportunity to amend his complaint again because the proposed third amended complaint submitted with his objection to the report and recommendation also failed to state a claim upon which relief could be granted.

Lafarge N. Am., Inc. v. All Star Ready Mix Corp., No. 14-CV-2481 (WFK)(RER), 2014 U.S. Dist. LEXIS 164422 (E.D.N.Y. Nov. 6, 2014), *R & R adopted as modified*, 2014 U.S. Dist. LEXIS 164083 (E.D.N.Y. Nov. 21, 2014). Action for damages in relation to a credit agreement. I issued a report recommending defendants' counsel's motion to withdraw be granted as to the corporate defendant but denied as to the corporation's president. In a minute entry, the district court adopted as modified the report and recommendation on defendants' counsel's motion to be relieved, ordering defense counsel to maintain representation as to both defendants rather than only one.

Snyder v. Perry, No. 14-CV-2090 (CBA) (RER), 2015 U.S. Dist. LEXIS 34499 (E.D.N.Y. Feb. 4, 2015), *R & R adopted in part*, 2015 U.S. Dist. LEXIS 33668 (E.D.N.Y. Mar. 18, 2015). Pro se action for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, Telephone Consumer Protection Act, 47 U.S.C. § 227, Fair Housing Act, 42 U.S.C. § 3613, 42 U.S.C. §§ 1983, 1988, New York General Business Law §§ 349, 352-c, and common law invasion of privacy, negligence, and breach of contract. I issued a report recommending that defendants' motion to dismiss be granted with prejudice as to the federal claims and without prejudice as to the state law claims, and that plaintiff's motions to strike be denied as moot. While the district judge adopted the recommendation that the pro se complaint be dismissed, she did not adopt the recommendation that it be dismissed with prejudice, and instead granted the plaintiff 30 days to amend the complaint to cure the deficiencies noted in the report and recommendation.

Chapin Home for the Aging v. McKimm, No. 11-CV-667 (FB) (RER), 2014 WL 12883697 (E.D.N.Y. Aug. 7, 2014), *R & R adopted in part*, 2014 WL 4662401 (E.D.N.Y. Sept. 18, 2014). Action for damages under New York Debtor Creditor Law in relation to purported fraudulent conveyance. I issued a report recommending that defendant's motion to dismiss be denied and plaintiff's motion for summary judgment be granted in part, and recommended that certain

damages be assessed. The district judge adopted the recommendations, but altered the recommended damages to apportion liability amongst the defendants, finding that creditor plaintiff was only entitled to receive that portion of fraudulently conveyed mortgage proceeds that corresponded with debtor defendant's ownership interest in the property, rather than the full amount of mortgage proceeds as recommended.

United States ex rel. Trane US, Inc. v. JHJ Enters., LLC, No. 13-CV-2689 (NGG) (RER), 2014 U.S. Dist. LEXIS 121471 (E.D.N.Y. Aug. 1, 2014), *R & R adopted as modified*, 2014 U.S. Dist. LEXIS 121326 (E.D.N.Y. Aug. 29, 2014). Action to enforce a settlement and recover funds pursuant to the Miller Act, 40 U.S.C. §§ 3131, *et seq*. I issued a report recommending that plaintiff's motion for summary judgment be granted. The district judge adopted the recommendation, but modified the recommended damages award to correct a computational error in the report.

Suvill v. Bogopa Serv. Corp., No. 11-CV-3372 (SLT) (RER), 2013 WL 9769068 (E.D.N.Y. Aug. 12, 2013), *R & R rejected*, 2014 WL 4966029 (E.D.N.Y. Sept. 30, 2014). Purported class action under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq*., and the New York Labor Law, N.Y. Lab. Law §§ 650, *et seq*. I issued a report recommending that plaintiffs' motion for class certification be granted as modified. The district court declined to adopt the report, finding Rule 23(a)'s commonality and Rule 23(b)(3)'s predominance requirements unsatisfied.

Gov't Emples. Ins. Co. v. Park Slope Med. & Surgical Supply, Inc., No. 11-CV-4028 (SLT) (RER), 2013 U.S. Dist. LEXIS 135888 (E.D.N.Y. July 12, 2013) and 2013 U.S. Dist. LEXIS 135880 (E.D.N.Y. July 19, 2013), *R & R adopted in part*, 2013 U.S. Dist. LEXIS 131305 (E.D.N.Y. Sept. 13, 2013). Action for declaratory relief and damages for common law fraud, unjust enrichment, and violations of the civil RICO act in connection with an alleged automobile no-fault insurance fraud scheme. I issued a report recommending that plaintiff's motion for default judgment be granted with respect to plaintiffs' common law fraud, unjust enrichment, and aiding and abetting fraud claims against certain defendants. I issued a second report recommending that plaintiffs' motion for default judgment be granted as to aiding and abetting fraud, common law fraud, unjust enrichment, civil RICO, and civil RICO conspiracy claims for an overlapping set of defendants. The district judge adopted the reports except to the extent they recommended the court enter partial judgment against participants of RICO schemes without supplemental briefing explaining why there was no just reason for delay.

Boyd v. J.E. Robert Co., No. 05-CV-2455 (KAM) (RER), 2012 WL 4718823 (E.D.N.Y. Aug. 27, 2012), *R & R adopted in part and modified in part*, 2012 WL 4718723 (E.D.N.Y. Oct. 2, 2012), *reconsideration denied*, 2013 WL 5436969 (E.D.N.Y. Sept. 27, 2013), *aff'd*, 765 F. 3d 123 (2d Cir. 2014). Action for damages under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq*.,

and New York statutory and common law. I issued a report recommending that defendants' summary judgment motion be granted with respect to plaintiffs' federal claims and that the court decline to exercise supplemental jurisdiction over plaintiffs' state law claims. Without criticizing the reasoning in the report and recommendation, the district judge adopted the recommended resolution for different reasons advanced by defendants.

United States v. Butler, No. 08-CR-370 (JBW) (RER), 2012 U.S. Dist. LEXIS 160758 (E.D.N.Y. June 27, 2012), *R & R adopted as modified*, 2012 U.S. Dist. LEXIS 166885 (E.D.N.Y. Oct. 19, 2012), *aff'd*, 543 F. App'x 95 (2d Cir. 2013). Forfeiture action under 21 U.S.C. § 853(n) to enjoin government from executing against assets to satisfy a criminal defendant's forfeiture order and fine. I issued a report recommending denial of the non-party movant's motion to preliminarily enjoin the government from executing against the assets in satisfaction of forfeiture order and criminal fine. The district judge adopted the recommendation, but struck a portion of the report. The Court of Appeals for the Second Circuit affirmed the conclusions of law in the report.

United States v. Vernace, No. 11-CR-05 (E.D.N.Y. Jan. 27, 2011), *rev'd*, (E.D.N.Y. Feb. 9, 2011). Criminal action charging a leader of the Gambino organized crime family with, *inter alia*, racketeering conspiracy involving multiple crimes of violence and the use of a firearm. At a detention hearing I indicated that I would release the defendant on a $5 million dollar secured bond with stringent conditions and ten sureties. The release was stayed to permit the government to appeal to the assigned district judge. Upon de novo review the district judge denied the defendant's release, finding that the defendant was a danger to the community and no conditions of release or combinations of conditions of release could guard against that danger. Copies supplied.

Goldmark, Inc. v. Catlin Syndicate Ltd., No. 09-CV-3876, 2010 WL 5872337 (E.D.N.Y. Nov. 22, 2010), *R & R adopted in part*, 2011 WL 743568 (E.D.N.Y Feb. 24, 2011). Action for breach of contract, violation of the implied covenant of good faith and fair dealing, and violations of New York Insurance Law, N.Y. Ins. L. §§ 1213(d), 2601, arising out of an insurance coverage dispute. I issued a report recommending that plaintiff's claims be dismissed for failure to state a claim. The district judge adopted the report in full effect and dismissed plaintiff's claims, but nevertheless rejected "the statement of law regarding the relationship between consequential damages and the breach of the covenant of good faith and fair dealing" contained in the report.

Jackson Hewitt Inc. v. Excellent Professional Services LLC, No. 08-CV-5237 (JG) (RER), 2010 WL 5665033 (E.D.N.Y. Nov. 8, 2010) and 2010 WL 5665032 (E.D.N.Y. Aug. 6, 2010), *R & R adopted in part*, 2011 WL 317969 (E.D.N.Y. Jan. 31, 2011). Action for breach of contract arising out of a franchise agreement. I issued a report recommending that plaintiff's motion for entry of default judgment be granted, but that plaintiff's motion to dismiss defendants'

counterclaims for violations of New York General Business Law § 349, common law fraudulent concealment, unjust enrichment, and unlawful termination of contract be denied, and that plaintiff's motion for attorney's fees be denied. I issued a supplemental report recommending that plaintiff's motion to dismiss defendants' counterclaims and motion for attorney's fees be granted after defendants failed to object to the initial report, to show cause as to why their counterclaims should not be dismissed, or object to plaintiff's fee application. The district judge adopted the report and recommendation in full, but awarded plaintiff interest at a higher annual rate based on the parties' written agreement and not limited by New Jersey usury laws as I had recommended.

Johnson v. Bellnier, No. 09-CV-381 (KAM) (RER), 2010 WL 7100915 (E.D.N.Y. Nov. 8, 2010), *R & R adopted in part and modified in part*, 2011 WL 3235708 (E.D.N.Y. July 27, 2011), *rev'd*, 508 F. App'x 23 (2d Cir. 2013), *cert. denied sub nom. Johnson v. Chappius*, 570 U.S. 922 (2013). A state jury convicted petitioner of depraved indifference murder, but acquitted him of intentional murder, for what the prosecution contended and petitioner admitted was the intentional killing of another man. Petitioner brought this action under 28 U.S.C. § 2254 to challenge that conviction. Upon referral from the district judge, I issued a report recommending in part that petitioner's conviction for depraved indifference murder be vacated as legally insufficient under New York law. The district judge adopted the recommendation in part, agreeing with the conclusion that petitioner's conviction was legally insufficient under New York law. On appeal, but the Second Circuit reversed the district court's decision, finding that petitioner's conviction was not legally insufficient as a reasonable jury could have concluded that, despite his confession that he intended to cause the victim's death, petitioner's actions illustrated depraved indifference to the victim and the public.

United States v. Butler, No. 08-CR-370 (E.D.N.Y. Apr. 27, 2010), *rev'd*, (E.D.N.Y. June 25, 2010). Defendant was found guilty of conspiracy to commit securities fraud, securities fraud, and conspiracy to commit wire fraud. Following his conviction, I issued a memorandum and order granting the government's motion to revoke the defendant's bond and remand him pending an appeal of his conviction. Without much substantive explanation the district court vacated my order to revoke defendant's bond and remand him pending appeal. Copies supplied.

Anderson v. City of N.Y., No. 06-CV-5726 (RRM) (RER), 2010 WL 9071556 (E.D.N.Y. Mar. 26, 2010), *R & R adopted in part and rejected in part*, 2012 WL 6720694 (E.D.N.Y. Dec. 27, 2012). This was an action for race discrimination and a hostile work environment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e–2 and 2000e–3(a), 42 U.S.C. §§ 1981 and 1983, and related New York State and New York City law. Defendant moved for summary judgment on all of plaintiff's claims. I issued a report recommending that defendant's summary judgment be granted in part and denied in part. The district judge adopted the recommendation granting defendants' summary judgment

motion as to certain claims, but rejected the recommendation to dismiss plaintiff's state and city discrimination claims based on failure to file a notice of claim pursuant to section 50-e(1)(a) of New York General Municipal Law, finding that such failure does not require dismissal in employment discrimination cases.

Rupolo v. Oshkosh Truck Corp., No. 05-CV-2978 (SLT) (RER) 2009 WL 6547339 (E.D.N.Y. Oct. 27, 2009), *R & R adopted in part and rejected in part*, 749 F. Supp. 2d 31 (E.D.N.Y. 2010). This was an action for personal injuries plaintiff allegedly sustained while working on a truck designed and manufactured by defendant. I issued a report recommending that (1) plaintiff's motion for a jury demand be denied, (2) plaintiff's motion to exclude defendant's expert be denied, and (3) defendant's motion for summary judgment be denied. The district court adopted the recommendation to deny plaintiff's motion to exclude defendant's expert witness and to deny defendant's motion for summary judgment, but rejected the recommendation to deny plaintiff's motion for trial by jury, which it determined was not formally referred to me.

ASA Mgmt. Corp. v. IADC, Inc., No. 08-CV-3488 (ARR)(RER), 2009 WL 2208086 (E.D.N.Y. May 6, 2009), *R & R adopted as modified*, 2009 WL 2208083 (E.D.N.Y. July 21, 2009). This was a maritime action for breach of contract for carriage of goods by sea. I issued a report recommending that plaintiff's motion for default judgment be granted in part, and that it be awarded damages and interest less than requested in the motion. The district judge adopted the report and recommendation, but awarded additional damages based on evidence plaintiff submitted along with its objection to the report and recommendation.

Dasrath v. Ross Univ. Sch. of Med., No. 07-CV-2433 (CBA) (RER), 2008 WL 11438041 (E.D.N.Y. Aug. 6, 2008), *R & R adopted in part and modified in part*, 2009 WL 891765 (E.D.N.Y. Mar. 31, 2009). This was an action for breach of contract, fraud, violation of New York Human Rights Law, N.Y. Executive Law § 296(4), and violations of the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101, *et seq*. I issued a report recommending that defendant's motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim be granted in its entirety, and that plaintiff's motion for a stay to permit him to satisfy the Age Discrimination Act notice requirements be denied. While adopting the recommendation that all of plaintiff's claims be dismissed and that plaintiff's motion to stay be denied, the district court declined to dismiss the claims with prejudice as recommended, and granted plaintiff leave to file an amend complaint within thirty days.

Kawan Food Manufacturing SDN BHD v. Bengal Sea Foods USA Canada, inc., et al., No. 06-CV-5430 (ERK) (RER) (E.D.N.Y. May 9, 2008), *R & R adopted in part*, (E.D.N.Y. Jul. 7, 2008); *see also Kawan Food Manufacturing SDN BHD v. Bengal Sea Foods USA Canada, inc., et al.*, No. 06-CV-5430 (ERK) (RER) (E.D.N.Y. Feb. 26, 2008), *R & R not adopted*, (E.D.N.Y. Mar. 21, 2008). This was an action for, *inter alia*, trademark infringement under the Lanham Act of

1946, 15 U.S.C. §§ 1051, *et seq.* On February 26, 2008, I issued a report recommending that the corporate and individual defendants be held in contempt for marketing products that violated a permanent injunction previously entered by the district judge. The district judge rejected that recommendation, finding on de novo review that the products did not appear substantially similar to plaintiff's products, and that I had improperly placed the burden on the defendants to prove that they did not violate the permanent injunction. The district judge remanded the matter to me for further proceedings consistent with his written decision. Copy supplied. Subsequently, on May 9, 2008, I issued a second report, again recommending that the corporate and individual defendants be held to have violated the permanent injunction by marketing products that were substantially similar to plaintiff's products. The district judge adopted the recommendation in part, albeit applying different reasoning, but rejected without analysis the recommendation that the individual defendants be sanctioned. Copies supplied.

In re Comverse Tech., Inc. Sec. Litig., No. 06-CV-1825 (NGG) (RER), 2006 WL 2792757 (E.D.N.Y. Sept. 27, 2006), *vacated*, 2007 WL 680779 (E.D.N.Y. Mar. 2, 2007), *adhered to on reconsideration*, 2008 U.S. Dist. LEXIS 121650 (E.D.N.Y. Mar. 24, 2008). This was an action under the Private Securities Litigation Reform Act of 1995, Pub. L. 104-67, 109 Stat. 737 (1995). I issued an order appointing a lead plaintiff and counsel. The district judge vacated that order, finding that I had not properly applied *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005) to determine which proposed lead plaintiff sustained the largest loss during the applicable period.

Phelps v. Szubinski, No. 04-CV-773 (ERK) (RER) (E.D.N.Y. Sep. 1, 2006), *rev'd*, (E.D.N.Y. Nov. 15, 2006). Civil rights action for excessive force and false arrest under 42 U.S.C. § 1983 and New York State law. I issued an order permitting plaintiff to serve an untimely expert report but assessing him the costs for that expert's deposition due to his unjustified delay in producing the report. Upon plaintiff's appeal from that order, the district judge reversed, finding that the circumstances did not come within the "manifest injustice" exception to the rule that the party seeking discovery from an expert (here the defendant) pay the expert a reasonable fee. Copies supplied.

United States v. Young et al., No. 06-CR-285 (NGG) (E.D.N.Y. Jul. 28, 2006), *vacated*, (E.D.N.Y. Aug. 7, 2006). Multi-defendant criminal action for *inter alia*, racketeering and racketeering conspiracy. I issued an order releasing one of the defendants on a $750,000 secured bond with strict conditions and pretrial supervision, but stayed the defendant's release pending the government's appeal to the district judge. Upon de novo review, the district judge vacated the order setting conditions for release on bond, finding that the defendant was a risk of flight and danger to the community, and that no conditions or combination of conditions could guard against that risk and danger. Copies supplied.

g. Provide a description of the number and percentage of your decisions in which

you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a U.S. magistrate judge, some of my opinions, reports and recommendations, and other decisions and rulings are not selected for publication in reporters. I estimate that in my 16 years as a magistrate judge, I have issued fewer than 100 such unreported opinions, reports and recommendations and other decisions and rulings, representing less than 15 percent of my total opinions. All reported and unreported opinions, reports and recommendations, and other decisions and rulings I have issued are filed and stored on CM/ECF, the federal court Case Management/Electronic Case Files system.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Kaikov v. Kaikov, No. 19-CV-2521 (LDH) (RER), 2020 WL 9812923 (E.D.N.Y. Oct. 5, 2020)

New York State Citizens' Coal. For Child. v. Velez, No. 10-CV-3485 (WFK) (RER), 2016 WL 11263164 (E.D.N.Y. Nov. 7, 2016), *R & R adopted*, 2017 WL 4402461 (E.D.N.Y. Sept. 29, 2017), *aff'd*, 922 F.3d 69 (2d Cir. 2019), *reh'g en banc denied*, 935 F.3d 56 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 956 (2020)

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 never sat by designation on any federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The United States District Court for the Eastern District of New York employs a system that flags newly assigned cases based on recusal criteria that each judge identifies. This system permits a judge to identify potential conflicts ex ante, and then decide whether to recuse *sua sponte* in a newly assigned case.

Motions for my recusal were filed in *Schultz v. Tribune Company, Inc.*, No. 06-CV-4800 (FB) (RER), *Wise v. City of New York*, No. 12-CV-1823 (ENV) (RER), and *Jones Bey v. Sirius-El*, No. 22-CV-4649 (PKC) (RER). In the former two cases I reviewed the parties' submissions, the docket, my personal notes, consulted the Code of Conduct for United States Judges, and conducted legal research and rendered decisions denying the motions. In the latter case, *Jones Bey*, the district judge denied the motion without my involvement.

In *Schultz v. Tribune Company, Inc.*, plaintiff sought my recusal based on: (1) my former association with O'Melveny & Myers, LLP, the firm with which defendants' counsel was formerly a member; (2) my former affiliation with the United States Attorney's Office for the Southern District of New York, which had investigated defendants in a purportedly related criminal matter; and (3) because one of the defendants' witnesses was a former Assistant in the Criminal Division of the United States Attorney for the Southern District of New York. I denied the motion without prejudice because "[o]n the present record, there is no basis, or need, for recusal. My tenure with O'Melveny & Myers, LLP, with which [defense counsel] was also associated, ended in April 1998, at least 5 years before the genesis of the instant lawsuit. Also, while I was an Assistant United States Attorney in the Southern District of New York, I was assigned to the Civil Division, not the Criminal Division. Thus, I have no knowledge of any of the underlying facts of this case or the purportedly related criminal investigation and/or prosecution. I also do not know [the former Assistant United States Attorney who represented the defendant in connection with an investigation of the plaintiff and others], nor have I ever worked with him."

In *Wise v. City of New York*, defendants sought my recusal because one of the plaintiff's attorneys was appointed to the Merit Selection Panel considering my reappointment to a second term as a U.S. magistrate judge, and I had allegedly uttered remarks during a telephone conference that exhibited possible bias toward defendants and/or their counsel. I denied the motion without prejudice because plaintiff's attorney had already recused himself from the Merit Selection Panel as per the Panel's standard practice, and defendants' contentions about my remarks during the telephone conference were factually incorrect and legally baseless. *See Wise v. City of New York*, No. 12-CV-1823 (ENV) (RER), 2013 WL 3190230 (E.D.N.Y. June 21, 2013).

In *Jones Bey v. Sirius-El*, the pro se plaintiff sought my recusal and that of the district judge based on the contention that we had denied all of her motions and various

applications in her prior cases and because she believed we were biased against her. The district judge denied the motion in a summary order on CM/ECF that refuted all of the pro se plaintiff's accusations and noted that recusal is not warranted based on prior adverse rulings.

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 1994 to 1995, I served as a law clerk to the Honorable David G. Trager of the Eastern District of New York.

       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;

          1993 – 1994
          New York City Council
          250 Broadway
          New York, New York 10007

Legislative Attorney

1995 – 1998
O'Melveny & Myers LLP
7 Times Square
New York, New York 10036
Associate

1998 – 2006
U.S. Attorney's Office, Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007
Assistant U.S. Attorney

2006 – present
U.S. District Court, Eastern District of New York
Theodore Roosevelt Courthouse
225 Cadman Plaza East, Room 1215S
Brooklyn, New York 11201
U.S. Magistrate 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.

Before becoming a U.S. magistrate judge in February 2006 I did not serve as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

I began my legal career in 1993 as a legislative attorney for the New York City Council. I drafted legislation as requested by Council members and served as counsel to a number of the Council's committees and subcommittees. As counsel I would draft briefing papers and agendas for monthly committee meetings and hearings.

After serving as a law clerk in the Eastern District of New York from 1994 to 1995, I joined O'Melveny & Myers LLP in New York as an associate in the litigation department. My practice at O'Melveny from 1995 to 1998 was evenly split between intellectual property and insurance defense. Our intellectual property cases involved trademark and copyright infringement, and our insurance cases mostly involved environmental coverage issues. On the intellectual property cases, I worked directly with a partner, and

performed a wide variety of tasks from drafting pleadings, discovery requests and responses, and motions, to negotiating discovery disputes with adversaries. On the insurance side, I also drafted discovery requests and responses, pleadings, and various substantive motions, including motions for summary judgment and to dismiss, and took and defended depositions of fact and expert witnesses.

My next position was as an Assistant U.S. Attorney in the civil division of the U.S. Attorney's Office for the Southern District of New York beginning in May 1998. Initially, I was the sole attorney responsible for 40 to 70 cases in a wide variety of areas: civil rights, employment, tax, bankruptcy, challenges to administrative or regulatory actions, and all varieties of tort claims against the United States. In that capacity, I drafted all pleadings, discovery requests and responses, substantive and procedural motions, pretrial papers, and attended all court conferences and hearings. I had three jury trials and three appeals during that period and appeared in court frequently.

As I became more senior in the U.S. Attorney's Office, I handled more complex cases involving health care fraud, false claims, environmental issues, and criminal civil rights violations. I worked on several large cases as part of a team of attorneys. During this period, the number of district court appearances declined due to the nature of the cases, however, I produced a significant amount of written work. I also served as second chair in three bench trials during this period and argued six times in the Court of Appeals for the Second Circuit.

In mid- to late-2004 I was appointed as an Acting Deputy Chief of Appeals, and later Deputy Chief of Appeals. My docket became largely appellate in nature, although I continued to handle several large cases in the district court. In this capacity, I edited briefs to the Court of Appeals for the Second Circuit for other Assistant U.S. Attorneys, conducted their moot appellate court arguments, and was second chair during their oral arguments. My appearances in district court declined further during this period, although my appearances in the Second Circuit increased. I left the U.S. Attorney's Office in February 2006 to become a U.S. magistrate judge.

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

As a Legislative Attorney my clients were the New York City Council and its elected members. While an Associate at O'Melveny & Myers my clients were several large commercial insurance carriers and several large media companies. My clients as an Assistant U.S. Attorney were the United States of America, its governmental agencies, and employees. I

represented the Internal Revenue Service, the Postal Service, the State Department, the Department of Defense, the Department of Homeland Security, the Federal Bureau of Investigation, the Department of Veterans Affairs, U.S. Customs Service, the Department of the Army, and the Army Corps of Engineers to name just a few.

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 a Legislative Attorney in 1993, my practice was not in litigation and I did not appear in court.

As an associate with O'Melveny & Myers from 1995 to 1998 my practice was almost entirely in litigation, but I appeared in court only a handful of times.

As an Assistant U.S. Attorney from 1998 to 2006 my practice was entirely litigation and I appeared frequently in both the district court and Court of Appeals for the Second Circuit.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: 5%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 85%
   2. criminal proceedings: 15%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

When I was in private practice, my responsibilities included pre-trial preparation (e.g., managing discovery, taking and defending depositions, and drafting pre-trial pleadings and dispositive motions) and I was not primarily responsible for trying cases and did not handle any matters that were tried to verdict while I worked on them.

While I was an Assistant U.S. Attorney from 1998 to 2006, I tried six cases to verdict: three jury trials and three bench trials.

i. What percentage of these trials were:
   1. jury: 50%

2. non-jury: 50%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not 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. *NRDC et al. v. Army Corps of Engineers*, No. 05 Civ. 762 (SAS) (S.D.N.Y.), 457 F. Supp. 2d 198 (S.D.N.Y. 2006); *see also* 399 F. Supp. 2d 386 (S.D.N.Y. 2005)

From 2005 to 2006, I represented the U.S. Army Corps of Engineers in an action brought by a group of environmental organizations and concerned citizens under the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* The plaintiffs challenged the Army Corps' decision to proceed with the $2.3 billion New York/New Jersey harbor deepening project without conducting an additional Supplemental Environmental Impact Statement. Plaintiffs claimed the Army Corps decision did not adequately consider the impact of the harbor deepening project on the Environmental Protection Agency's (EPA) plan to study industrial pollution and evaluate possible cleanup options for contamination in the harbor. I successfully opposed plaintiffs' motion for preliminary injunction, which they withdrew. The parties' cross-motions for summary judgment were decided largely in plaintiffs' favor, with the exception of their renewed request for an injunction, which was denied. I became a magistrate judge in February 2006 while the case was still being litigated. Ultimately, the case settled.

Co-counsel
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Willens & Scarvalone LLP
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(646) 200-6330

Opposing Counsel
Mitchell Bernard
Larry Levine
National Resources Defense Counsel
40 West 20th Street, 11th floor
New York, NY 10011
(312) 651-7909 / (312) 651-7935

2. *United States v. City of New York*, No. 02 Civ. 4699 (DC) (MHD) (S.D.N.Y.), and *Wright v. Stern*, No. 01 Civ. 4437 (DC) (MHD), 2004 WL 2360147 (S.D.N.Y. Oct. 20, 2004); 2003 WL 23095571 (S.D.N.Y. Dec. 3, 2003); 2003 WL 21543539 (S.D.N.Y. July 9, 2003); 2003 WL 21543539 (S.D.N.Y. July 3, 2003); 2003 WL 136090 (S.D.N.Y. Jan. 14, 2003); 2003 WL 115232 (S.D.N.Y. Jan. 13, 2003); *see also Wright v. Stern*, 553 F. Supp. 2d 337 (S.D.N.Y. 2008); 450 F. Supp. 2d 335 (S.D.N.Y. 2006)

From 2001 to 2006, I, along with other Assistant U.S. Attorneys, investigated and litigated an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, against the City of New York and the Department of Parks and Recreation for a pattern and practice of discrimination in promotions. We were each involved in all aspects of the case, including discovery, depositions, and settlement discussions. After several years of litigation, we succeeded in negotiating a consent judgment that established a written, objective, and non-discriminatory promotion policy. A consolidated private class action for the same violations was litigated concurrently and ultimately settled for $21 million.

Co-Counsel
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Counsel on Consolidated Case
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Opposing Counsel
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New York City Department of Parks and Recreation
830 Fifth Avenue
New York, NY 10065
(212) 360-1375

Barbara Butler (contact information unavailable)
Kathleen Comfrey (contact information unavailable)

3. *United States v. Westchester County*, No. 05 Civ. 0650 (CM) (S.D.N.Y.)

From 2003 to 2005, I was the sole attorney responsible for investigating allegations that Westchester County, New York had failed to comply with the provisions of the Voting Right Act and Help America Vote Act that mandate language accommodations at the polls for non-English speaking citizens. Following the investigation, I was the sole attorney responsible for prosecuting this lawsuit under Section 203 of the Voting Rights Act, *see* 42 U.S.C. §§ 1973aa-1a, 1973aa-2, and section 302 of the Help America Vote Act, *see* 42 U.S.C. §§ 15482, 15511. In July 2005, Westchester County voluntarily entered into a consent decree that provided for a comprehensive remedial plan for compliance with the language requirements of the Voting Rights Act and the posting requirements of the Help America Vote Act.

Opposing Counsel
Carol Arcuri (formerly with Westchester County Attorney's Office)
Assistant to the County Clerk
110 Dr. Martin Luther King, Jr. Boulevard, Room 330
White Plains, NY 10601
(914) 787-0709

4. *U.S. ex rel. Reilly v. Catskill Regional Medical Center*, No. 00 Civ. 7906 (KMW) (S.D.N.Y.)

From 2000 to 2006, I was the sole attorney responsible for investigating and prosecuting this health care fraud action brought pursuant to the *qui tam* provisions of False Claims Act, 31 U.S.C. § 3730. The relator alleged that one of the corporate defendants entered into illegal patient referral schemes with local hospitals to supply them with Medicaid-eligible drug and alcohol detoxification patients for a monthly fee, *i.e.*, a kickback

scheme. After much investigation and negotiation with defendants, the government intervened in the action and settled the claims against three of the four corporate defendants for nearly $7 million. The fourth defendant settled for an additional $3.4 million after I became a magistrate judge.

Relator's Counsel
Timothy J. McInnis
521 5th Avenue
New York, NY 10175
(212) 292-4573

David Konigsberg
Menz Bonner Komar & Koenigsberg LLP
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White Plains, NY 10601
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Opposing Counsel
Steven Chananie
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Peter Bergmann (deceased)

Barry J. Pollack
Kramer Levin Robbins Russell
2000 K Street, Northwest, 4th Floor
Washington, DC 20006
(202) 775-4514

Amy Millard
Chuck Clayman
Clayman Rosenberg Kirshner & Linder LLP
305 Madison Avenue, Suite 650
New York, NY 10165
(212) 922-1080

5. *Kalsson v. Fed. Election Comm'n*, No. 04 Civ. 6984 (LAK) (S.D.N.Y.), 356 F. Supp. 2d. 371 (S.D.N.Y. 2005), *aff'd*, 159 F. App'x 326 (2d Cir. 2005)

From 2004 to 2006, I was the sole attorney defending the United States, the Federal Election Commission and the Attorney General against a constitutional challenge to the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg, *et seq*. Plaintiff

contended that the NVRA was unconstitutional on the theories that its enactment was not within the enumerated powers of the federal government and that it violated Article II of the U.S. Constitution. Upon the government's motion, the district judge dismissed the case for lack of Article III standing. The District Court's decision was affirmed on appeal.

Opposing Counsel
Todd C. Bank
119-40 Union Turnpike, 4th Floor
Kew Gardens, NY 11415
(718) 520-7125

6. *In re Tyson*, No. 03 B 41900 (ALG) (S.D.N.Y.)

From 2003 to 2005 I represented the Internal Revenue Service in the Chapter 11 bankruptcy of boxer Mike Tyson and his professional corporation. I successfully negotiated a bankruptcy plan requiring substantial contributions of Tyson's future fight and non-fight income into fund to pay, among other things, the Internal Revenue Service's $20 million secured claim.

Opposing Counsel
Robert Feinstein
Pachulski, Stang, Ziehl & Jones & Weintraub, P.C.
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New York, NY 10017
(212) 561-7700

7. *United States v. Cote*, No. 06 CR. 0121 (CLB), 2007 WL 1000849 (S.D.N.Y.), *rev'd and remanded*, 544 F.3d 88 (2d Cir. 2008)

From 2003 to 2006, I was the lead investigative attorney on this criminal civil rights case under 18 U.S.C. § 242. I collected documents, interviewed witnesses, prepared the memorandum to the U.S. Attorney recommending prosecution, and secured a tolling agreement from the defendant. I left the U.S. Attorney's Office at the initial stages of the grand jury proceedings. The defendant corrections officer was ultimately convicted by a jury of using excessive force against an inmate and causing serious and permanent physical injuries in violation of 18 U.S.C. § 242.

Co-Counsel
Andrew Schilling
Buckley LLP
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New York, NY 10036
(212) 600-2400

Opposing Counsel

William I. Aronwald (deceased)

8. *United States v. Sforza*, No. 00 Civ. 1307 (DCF) (S.D.N.Y.), 2000 WL 1818686 (S.D.N.Y. Dec. 12, 2000), *aff'd*, 326 F.3d 107 (2d Cir. 2003)

From 1999 to 2003, I was the principal attorney in an action under the False Claims Act, 31 U.S.C. §§ 3729, *et seq.*, and federal common law against a former Postal Service employee and his wife for submitting and conspiring to submit false claims for benefits under the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101, *et seq*. I successfully defended against defendants' motion to dismiss under FECA's statutory preclusion provision. Ultimately the case was settled one week prior to trial before Magistrate Judge Debra Freeman. Defendants subsequently reneged on the settlement and Magistrate Judge Freeman enforced the settlement. I also successfully defended against appeal of FECA preclusion & forced settlement issues.

Trial Co-Counsel
Hon. Sean Lane (formerly with the U.S. Attorney's Office)
U.S. Bankruptcy Court, SDNY
300 Quarropas Street
White Plains, NY 10601
(212) 668-5637

Opposing Counsel
Paul Kalker
150 Motor Parkway, Suite 401
Hauppauge, NY 11788
(631) 979-8808

9. *Economou v. Caldera*, No. 99 Civ. 12117 (AJP) (S.D.N.Y.), 2000 WL 1844773 (S.D.N.Y. Dec. 18, 2000), *aff'd*, 286 F.3d 144 (2d Cir. 2002), *cert. denied*, 537 U.S. 975 (2002)

From 1999 to 2002 I was the principal attorney defending the Secretary of the United States Department of the Army against a race, disability, and age discrimination lawsuit brought by a senior official within of the Army Corps of Engineers' New York District. I defended my clients against plaintiff's challenge to alleged discriminatory termination, failure to train, failure to accommodate disability, and retaliatory investigations. All but the failure to train claim were dismissed on summary judgment. After trial, the jury returned a verdict for defendant on plaintiff's failure to train claim. Both the summary judgment decision and trial verdict were affirmed on appeal.

Opposing Counsel
Alan Serrins
Serrins & Associates LLC
80 Pine Street, Suite 3202
New York, NY 10005

(212) 384-0202

10. *South Bronx Coalition for Clean Air v. Conroy*, No. 98 Civ. 4404 (AGS) (S.D.N.Y.), 20 F. Supp. 2d 565 (S.D.N.Y. 1998)

In 1998, I defended the Administrator of the Environmental Protection Agency and the Secretary of the Department of Transportation in an action under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, from a group of environmental organizations challenging state and city transportation and environmental agencies' decisions to situate a bus transfer station in a particular neighborhood. We successfully argued that the federal government's involvement in the project did not rise to the level of a "major federal action," and therefore, the National Environmental Policy Act did not apply. The court denied plaintiffs' motion for a preliminary injunction and granted defendants' cross-motions to dismiss.

Opposing Counsel
John F. McHugh
John F. McHugh, PC
233 Broadway, Suite 2320
New York, NY 10279
(212) 483-0875

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 my regular duties as a magistrate judge, at the appointment of the Board of Judges I worked as part of a three-magistrate judge committee on *In re: Hurricane Sandy Cases*, 14-MC-41 (E.D.N.Y.). In that role, I helped to design, implement, and oversee an innovative expedited discovery and case management procedure to handle a docket of 1,500 insurance cases arising from super storm Sandy. Our work also involved the design and implementation of a dedicated mediation program, through which we trained more than 100 mediators, all intended to ensure fair and expeditious review and resolution of those claims while minimizing the burden on the parties and the court.

From 2008 to 2019, I served on the court security committee, a multi-agency committee convened to insure the safe and secure operation of both the district and bankruptcy courts. From 2017 to 2019, I served on the Second Circuit conference planning committee, developing the educational programs for the Circuit's annual judicial conferences. Finally, throughout my legal and judicial career I have served on many governing boards and committees of bar associations and educational institutions (e.g., Federal Magistrate Judges Association, Federal Bar Council, Federal Bar Association,

Brooklyn Law School), and participated in numerous continuing legal education and civic outreach programs.

I have not performed lobbying activity and I have never 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 am an adjunct professor of clinical law at Brooklyn Law School and from 2008 to 2017 taught the Judicial Externship Seminar. The seminar is required for all Brooklyn Law School students enrolled in the Judicial Externship Clinic, and who serve as externs for federal judges. The seminar examines various aspects of the students' experiences as externs in federal judicial chambers, including the ethics rules applicable to court employees, initial proceedings in civil and criminal cases in federal court, the division of labor between district and magistrate judges, and the judicial decision-making process. 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.

    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.

    No family members or other persons, parties, categories of litigation or financial arrangements are likely to present potential conflicts of interest for me.

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

    I will follow the recusal statutes and Canon 3 of the Code of Conduct for United States Judges. I will recuse myself when necessary to resolve any real or apparent conflict 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.

    As a U.S. magistrate judge I have always taken very seriously my oath "to do equal right to the poor and to the rich," giving special solicitude to pro se parties who appear before me, whether they be plaintiffs or defendants. I take special care to ensure that they receive full due process, that they are guided to available pro se legal services, and that all court proceedings and procedures are explained to them fully in a manner which they can understand. On several occasions I have found pro bono legal representation for pro se litigants to ensure that their rights are properly defended. I have also participated extensively in our Court's civic education program, hosting New York City high school students and speaking with them about the importance of the federal courts.

    While an Assistant U.S. Attorney, I participated as a mentor attorney in a mock trial program for public high school students hosted by then-Second Circuit Judge Sonia Sotomayor, "The Trial of Goldilocks."

    For almost two years as an associate at O'Melveny & Myers, I represented an inmate challenging the conditions of his confinement as part of the Southern District of New York's pro bono panel. I litigated his case through an adverse decision on summary judgment, but secured for him the opportunity to file an amended complaint. My representation ended when I became an Assistant U.S. Attorney.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In March 2021, I submitted an application for a position on the U.S. District Court for the Eastern District of New York to Senator Charles Schumer's Judicial Screening Committee. On March 30, 2021, I interviewed with Senator Schumer's Screening Committee. On May 27, 2022, I interviewed with Senator Schumer. On June 2, 2022, I heard from Senator Schumer that he would be submitting my name to the White House for consideration regarding a federal district court vacancy in the Eastern District of New York. On June 9, 2022, I was contacted by the White House Counsel's Office concerning my potential nomination. On June 10, 2022, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On September 6, 2022, 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).

   James Edward Simmons Jr.

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

   United States District Judge for the Southern District of California

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.

   San Diego Superior Court
   P.O. Box 122724
   San Diego, California 92112

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

   1979; Inglewood, California

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.

   2001 – 2004, Golden Gate University School of Law; J.D., 2004

   July 1999, University of the West Indies at Barbados; no degree received (summer program)

   1997 – 2001, University of California at Berkeley; B.A., 2001

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.

   2017 – present
   San Diego Superior Court

P.O. Box 122724
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San Diego Superior Court Judge

2006 – 2017
San Diego District Attorney's Office
Hall of Justice
330 West Broadway
San Diego, California 92101
Deputy District Attorney

2005
San Diego City Attorney's Office
1200 3rd Avenue, Suite 700
San Diego, California 92101
Deputy City Attorney

2004 – 2005
Exclusively Legal
402 West Broadway, Suite 2500
San Diego, California 92101
Contract Attorney

Fall 2004
Macy's
2559 El Camino Real
Carlsbad, California 92008
Retail Clerk

Fall 2004
San Diego Public Defender's Office
450 B Street # 900
San Diego, California 92101
Law Clerk (unpaid)

2002 – 2004
Golden Gate University of Law
536 Mission Street
San Francisco, California 94105
Teacher's Assistant, Legal Research & Writing

Spring 2004
Patton Wolan Carlise LLP
1999 Harrison Street, Suite 1350
Oakland, California 94612
Law Clerk

2003 – 2004
Murphy Pearson Bradley & Feeney
88 Kearny Street, 10th Floor
San Francisco, California 94108
Law Clerk

Summer 2003
Alameda County District Attorney's Office
1225 Fallon Street, Suite 900
Oakland, California 94612
Certified Law Clerk

Summer 2002
California Appellate Project
101 Second Street, Suite 600
San Francisco, California 94105
Law Clerk

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 timely registered 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.

   San Diego Deputy District Attorney Association, San Diego County Prosecutor of the Year (2016)

   Earl B. Gilliam Bar Association, President's Award (2011)

   San Diego District Attorney Superior Court Division, Top Trial Attorney (2008)

   Earl B. Gilliam Bar Association, Distinguished Service Award (2006)

   Golden Gate University School of Law
   International Academy of Trial Lawyers Award for Outstanding Student in the Field of Litigation (2004)
   The Philip Burton Endowed Law Scholarship (2003 – 2004)
   Moot Court Board, Member (2003 – 2004)
   San Francisco Trial Lawyer's Association Trial Advocacy Competition Winner (2003)
   Dean's List (2003 – 2004)

Witkin Award for Academic Excellence in Legal Writing & Research (2002)
Appellate Advocacy Competition Semifinalist (2002)

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

California District Attorney Association (2006 – 2017)

California Judges Association (2017 – present)

California Young Lawyers Association of State Bar, Board of Directors (2007 – 2009)

Earl B. Gilliam Bar Association
Member (2005 – present)
Board of Directors (2005 – 2008)
Scholarship Committee Chair (2006 – 2013)

Judicial Council of the California Black Lawyer's Association (2018 – Present)

Lawyer's Club of San Diego (2013 – Present)

San Diegans Against Crime
Member (2006 – 2017)
Board of Directors (2011 – 2012)

San Diego County Bar Association (2005 – 2017)

San Diego Deputy District Attorney Association
Member (2006 – 2017)
Board of Directors (2007 – 2009)

San Diego Superior Court
Criminal Courts Committee (2020 – present)
Executive Committee (2021 – present)
Technology Committee (2019 – present)

The Honorable Fiorenzo V. Lopardo Inn of Court (2021 – present)

The Honorable William B. Enright Inn of Court (2010 – 2012)

10. **Bar and Court Admission**:

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

California, 2004

There have been no lapses in membership. I have been an inactive member (judicial status) since my appointment to the bench in 2017.

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.

Because I am a Superior Court Judge, I am not currently admitted to practice in any court. Before being sworn in as a judge, however, I was admitted to practice in all state courts in California.

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.

Parent Teacher Association of Bernardo Heights (2020 – present)

Parent Teacher Association of Painted Rock (2014 – present)

Rancho Bernardo Little League, Board of Directors (2017 – 2019)

Sigma Pi Phi Fraternity (2018 – 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.

Sigma Pi Phi Fraternity is an international fraternity dedicated to community service, mentorship and providing scholarships to underrepresented communities. Sigma Pi Phi Fraternity limits its membership to men.

To the best of my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the

practical implementation of membership policies.

12. **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.

North County Bar Association Volunteer Members: Judge James Simmons, North County Lawyer (Mar. 2022). 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.

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

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

June 16, 2022: Speaker, "State of the Court Address," North County Bar Association, Vista, California. I discussed the status of the North County Courts in my role as the Supervising Judge of the branch, including updates on our

courthouse maintenance project, the services that were available at the time of the speech, and future operational plans for the courthouse. I have no notes, transcript, or recording. The address for North County Bar Association is P.O. Box 2381, Vista, California 92085.

May 21, 2021: Speaker, "Words of Wisdom," New Deputy Training, San Diego District Attorney, San Diego, California. Recording supplied.

December 8, 2020: Panelist, Color of Justice Mentor Jet Program, National Association of Women Judges, San Diego, California. I discussed the challenges I have faced in my life and my career path. I have no notes, transcript, or recording. The address for National Association of Women Judges is P.O. Box 3363, Warrenton, Virginia 20188.

November 2, 2020: Panelist, Advocating for Change: A Conversation with Black Criminal Lawyers & Judges, Black Law Student Association at Golden Gate University School of Law, San Francisco, California, Virtual Presentation. I spoke about my background and experience leading to my appointment as a Superior Court Judge. I have no notes, transcript, or recording, but press coverage is supplied. The address for Golden Gate University School of Law is 536 Mission Street, San Francisco, California 94105.

October 16, 2020: Speaker, Career Day at Palomar College, Palomar College, San Marcos, California, Virtual Presentation. Recording supplied.

August 31, 2020: Guest Lecturer, Adjudicatory Criminal Procedure Class at Thomas Jefferson School of Law, San Diego, California. I spoke about criminal procedure, my career path to the bench, and my duties as a Superior Court Judge. I have no notes, transcript, or recording. The address for Thomas Jefferson School of Law is 701 B Street # 110, San Diego, California 92101.

May 24, 2019: Speaker, San Diego City Attorney, San Diego, California. I spoke about my background and career path to appointment on the San Diego Superior Court. I have no notes, transcript, or recording. The address for the San Diego City Attorney's Office is 1200 Third Avenue, Suite 1620, San Diego, California 92101.

April 20, 2018: Panelist, North County Color of Justice Mentor Jet Program, National Association of Women Judges, San Diego, California. I spoke about the obstacles I have overcome in my journey to pursue a career in law. I have no notes, transcript, or recording, but press coverage is supplied. The address for National Association of Women Judges is P.O. Box 3363, Warrenton, Virginia 20188.

Since 2017, I have greeted jurors to the San Diego Superior Court in the North County Branch at Vista, California. I have done this numerous times and am

unable to identify specific dates. During these presentations, I gave brief remarks thanking jurors for their service and explaining court procedures. I have no notes, transcripts, or recordings. The address for the North County Branch of the San Diego Superior Court is 325 South Melrose Drive, Vista, California 92081.

2008 and 2009 (specific dates unknown): Presenter: Neighborhood Law School, Earl B. Gilliam Bar Association, San Diego, California. I gave two presentations, one in 2008 and one in 2009. The presentations were about criminal procedure and a discussion of Fourth, Fifth and Sixth Amendment rights. I have no notes, transcripts, or recordings. The address for the Earl B. Gilliam Bar Association is P.O. Box 124527, San Diego, California 92112.

From 2006 to 2018, over a 10-week program, I spoke monthly at Johnson Elementary School through Project LEAD. LEAD means Legal Enrichment and Decision Making, where we focused on fifth grade students at a socioeconomically disadvantaged school. While at the District Attorney's Office, I was the director of the program and as part of the program my volunteers and I presented various lessons over 10 weeks, a tour of the Juvenile detention facility and a mock trial at the courthouse where the students played the roles of all the parties in the case. We presented lessons on budgeting, peer pressure, making good decisions, avoid joining gangs, and encouraging them to succeed academically. I have no notes, transcripts, or recordings. The address for Johnson Elementary School is 1355 Kelton Road, San Diego, California 92114.

Since 2004, I have given various talks at local middle and high schools about my upbringing and the challenges I have faced in my career. I have spoken at many schools in San Diego County, but I am unable to identify the specific dates. I have no notes, transcripts, or recordings.

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.

Ellen Ireland, *Like an Old Hand*, Daily Journal (Oct. 25, 2018). Copy supplied.

Katherine J. Bies et al., *Diversity in Prosecutors' Offices: Views from the Front Line*, The Stanford Criminal Justice Center (Mar. 16, 2016). Copy Supplied.

Fred Dickey, *Prosecutor's Mission to Fight Gangs is Personal*, San Diego Union Tribune, Column (June 22, 2015). Copy supplied.

Tony Perry and Maura Dolan, *San Diego gang member's case focus of Supreme Court privacy ruling*, Los Angeles Times (Jun. 25, 2014). Copy supplied.

KUSI, *Supreme Court ruling requires warrant for cellphone search* (June 2014).

Copy supplied.

June 25, 2014, I was interviewed during a live radio broadcast discussing *Riley v. California*, 573 U.S. 373 (2014), and the legal impact of the Supreme Court decision. I do not recall the broadcast company and do not have any transcript or recording of the interview.

CBS8.com (San Diego City News Service), *Two to stand trial for killing of bystander in Gaslamp* (Oct. 3, 2011). Copy supplied.

San Diego City News Service, *Two Men Charged in Gaslamp Shooting* (Aug. 31, 2010). Copy supplied.

San Diego City News Service, *Alexander Antunez Pled Guilty to Voluntary Manslaughter* (June 9, 2010). Copy supplied.

Cindy Horswell, *Mother seeks some answers in son's death* (Apr. 16, 2009). Copy supplied.

San Diego Union Tribune, *Public Safety Court Watch* (Apr. 11, 2009). Copy supplied.

Associated Press State & Local Wire, *Navy man charged in video game death of sailor* (Apr. 11, 2009). Copy supplied.

San Diego Union Tribune, *Man Pleads Not Guilty In Shooting Death Of Fellow Sailor* (Apr. 10, 2009). Copy supplied.

Eric Page, *DA: Sailor Waited Over Hour to Call 911*, NBC San Diego (Apr. 10, 2009). Copy supplied.

NBC San Diego, DA*: Missing Skateboard At Heart of Hillcrest Murder* (Aug. 14, 2008). Copy supplied.

Sara Wilkins, *Web-based program helps city fight graffiti*, North County Times (Sept. 14, 2007). Copy supplied.

San Diego City News Service, *Del Mar Sushi Stabbing* (Jan. 10, 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 as a San Diego Superior Court Judge on November 3, 2017, by Governor Jerry Brown. In April 2022, I became the Supervising Judge of the North County branch.

As Supervising Judge, I preside over the criminal master calendar and handle case assignments to other judges, conduct arraignments, take guilty pleas, preside over evidentiary hearings, conduct settlement conferences, sentencing hearings and probation revocation hearings.

Prior to becoming the Supervising Judge, I was assigned to the felony settlement department in the North County branch for two years from 2020 to 2022. In that assignment, I conducted settlement conferences for felonies and handled thousands of cases, many of which resulted in guilty pleas where I conducted sentencing proceedings.

From November 2017, when I was first appointed to the San Diego Superior Court, to 2020, I was assigned to an arraignment department in the North County branch. I presided over misdemeanor and felony arraignments. I took thousands of guilty pleas on misdemeanor cases while in this department. I also presided over the branch's military diversion calendar for military veterans who suffered mental health related trauma as a result of their military service and committed misdemeanor offenses related to that trauma.

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

   I have had thousands of cases reach final judgment either by plea, dismissal of actions, or trial. While I have not presided over any jury trials since becoming a Superior Court Judge, I have presided over twelve bench trials. Eight of those cases were traffic trials that I tried during my first month as a Superior Court Judge and two of those cases were small claims trials that I also tried during my first month as a Superior Court Judge, the remaining two were criminal trials.

   i. Of these cases, approximately what percent were:

jury trials:	0%
bench trials:	100%

   ii. Of these cases, approximately what percent were:

civil proceedings:	17%
criminal proceedings:	83%

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

   I have written no opinions. As a Superior Court judge assigned to criminal cases at the pretrial level, I make findings of probable cause and take the entry of pleas in criminal cases. My decisions are typically issued orally and recorded by the courtroom clerk as minute orders or in a court reporter's stenographic notes. The case files are stored in the San Diego County Superior Court case management

system or in paper files.

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. Martin* (SCN400388) (S.D. Cty. Super. Ct. 2022)

Ms. Martin was a drug rehab counselor and sold counterfeit pills that were laced with fentanyl to several individuals. She was charged with multiple counts of selling a controlled substance and with homicide for the death of a Navy sailor. Ms. Martin lied to many of the individuals she was selling the counterfeit pills to and claimed the pills were oxycodone and did not contain fentanyl. The victim received counterfeit pills from a friend who bought them from Ms. Martin, ingested them, overdosed, and died. Ms. Martin pled guilty to multiple counts of selling/furnishing a controlled substance and voluntary manslaughter. The parties stipulated that Ms. Martin would be sentenced to state prison in the range of 16 to 20 years 8 months. After hearing from the parties, the decedent's family, and other victims, I sentenced Ms. Martin to 19 years 4 months in state prison.

Counsel for People
Jorge Del Portillo
San Diego District Attorney
325 South Melrose Drive, Suite 5000
Vista, CA 92081
(619) 498-5650

Counsel for Defendant
Alejandro Morales
San Diego Alternate Public Defender Office
495 La Tortuga Drive, Suite 120
Vista, CA 92081
(760) 940-6450

2. *People v. Williams* (SCN414364) (S.D. Cty. Super. Ct. 2022)

Ms. Williams was charged with second degree murder and gross vehicular manslaughter when she drove while under the influence of drugs and struck a family of four, killing them all. While driving her vehicle, Ms. Williams was using difluoroethane or DFE, a gas used in aerosol products, and had marijuana and methamphetamine in her blood. The family of four, including a grandmother, her partner, and two children, ages 10 and 11, were out on their nightly walk when Ms. Williams drove onto the sidewalk, striking all four of them before colliding into a tree. Ms. Williams pled guilty to multiple counts of second-

degree murder and one count of gross vehicular manslaughter. The parties stipulated that Ms. Williams would receive a prison sentence of 25 years to life. I imposed the parties' stipulated sentence of 25 years to life in state prison.

Counsel for People
Laurie Hauf
San Diego District Attorney
330 West Broadway, Suite 900
San Diego, CA 92101
(619) 531-4040

Counsel for Defendant
Ricky Crawford
San Diego Public Defender
495 La Tortuga Drive, Suite 100
Vista, CA 92081
(760) 945-4026

3. *People v. Pascual* (SCN420431) (S.D. Cty. Super. Ct. 2022)

Mr. Pascual was charged with driving under the influence of alcohol and gross vehicular manslaughter. Mr. Pascual was driving his truck when he struck a pedestrian from behind and fled the scene afterwards. The victim was walking on the side of the road with her husband when she was struck by Mr. Pascual, and she died because of her injuries. Minutes before the collision, Mr. Pascual was seen on a convenience store video buying alcohol, while appearing to be visibly intoxicated. Mr. Pascual pled guilty to gross vehicular manslaughter and I imposed the parties' stipulated sentence of 11 years in state prison.

Counsel for People
David Uyar
San Diego District Attorney
325 South Melrose, Suite 5000
Vista, CA 92081
(760) 806-4065

Counsel for Defendant
Daniel Greene
Law Offices of Kerry L. Armstrong, APLC
750 B Street, Suite 2820
San Diego, CA 92101
(619) 234-2300

4. *People v. Sullivan* (SCN428754) (S.D. Cty. Super. Ct. 2022)

Mr. Sullivan was charged with stalking his former girlfriend, who had obtained a restraining order in early 2021. After the victim obtained the restraining order, Mr. Sullivan continued to harass and contact her in violation of the restraining order. Mr. Sullivan pled guilty to stalking and the parties stipulated that he would receive formal probation as his sentence. As part of his probation, he was ordered to complete an intensive drug and alcohol treatment program, attend domestic violence classes for a year, wear a GPS monitoring bracelet, and have no contact with the victim.

Counsel for People
Christopher Campbell
San Diego District Attorney
325 S. Melrose Drive, Suite 5000
Vista, CA 92081
(619) 753-5508

Counsel for Defendant
Vikas Bajaj
Law Office of Vikas Bajaj, APC
2150 1st Avenue, Apartment 200
San Diego, CA 92101
(619) 525-7005

5. *People v. Owens* (SCN421675) (S.D. Cty. Super. Ct. 2022)

Mr. Owens was charged with breaking into a home and confronting the female victim while she was in the middle of changing her clothes to enter the shower. Mr. Owens looked at the victim and told her to "Shhhh." The victim then ran into her closet and locked herself inside, throwing her body against the door. She was able to call police who came to the home to assist her. Mr. Owens was later arrested and pled guilty to residential burglary, admitting that someone was in the home at the time of the burglary and admitted that he had committed a prior residential burglary. Following Mr. Owens's guilty plea, I imposed the parties' stipulated sentence of 18 years.

Counsel for People
James Koerber
San Diego District Attorney
P.O. Box 121011
San Diego, CA 92112
(619) 531-4243

Counsel for Defendant
Joshua Bourne
Law Office of Joshua Bourne
185 West F Street, Suite 100

San Diego, CA 92101
(619) 238-8242

6. *People v. Earnest* (SCN415055) (S.D. Cty. Super. Ct. 2021)

Mr. Earnest was charged with stalking a 17-year-old girl after seeing photos of her on social media. He never met her in person, but would call her, contact her on different social media platforms and contact her parents and friends through social media whenever she would block him from her accounts. This continued for several years even after the young lady became an adult and obtained a restraining order. Mr. Earnest pled guilty to several counts of stalking and violating a restraining order. The parties stipulated that Mr. Earnest would receive a suspended sentence, attend and complete mental health treatment and have regular review hearings with the court to ensure that he was complying with his treatment plan. I sentenced Mr. Earnest consistent with the stipulated agreement.

Counsel for People
Patricia Lavermicocca
San Diego District Attorney
325 South Melrose Drive, Suite 5000
San Diego, CA 92081
(760) 806-4084

Counsel for Defendant
James Dicks
JD Law
400 South Melrose Drive, Suite 109
Vista, CA 92081
(760) 630-2000

7. *People v. Lissona* (SCN415991) (S.D. Cty. Super. Ct. 2021)

Mr. Lissona was driving on a residential street, speeding, when he struck a 17-year-old girl who died because of her injuries. The victim was talking to friends in front of her house when Mr. Lissona struck her. After striking the victim, Mr. Lissona drove away from the scene, never offering any aid or assistance. Mr. Lissona was not contacted until several days later. Mr. Lissona later admitted that he was driving to obtain more drugs when he hit and killed the victim. Mr. Lissona pled guilty before me to the sole count of hit and run causing death, which under California law carries a maximum sentence of four years in state prison. After hearing from all parties, including the victim's family, I imposed the maximum sentence of four-years in state prison.

Counsel for People
Kimberly Coulter

San Diego District Attorney
325 South Melrose Drive, Suite 5000
Vista, CA 92081
(619) 441-4588

Counsel for Defendant
Brandon Naidu
Law Office of Brandon S. Naidu
2820 Camino Del Rio South, Suite 110
San Diego, CA 92108
(619) 363-4811

8. *People v. Tennery* (SCN425359) (S.D. Cty. Super. Ct. 2021)

Ms. Tennery drove her car after having several drinks at a bar, striking, and killing a bicyclist. She did not stop at the scene to render any assistance. Ms. Tennery turned herself into law enforcement a week after the incident and admitted her guilt. She was charged with one felony count of hit and run causing death and one misdemeanor count of vehicular manslaughter. Ms. Tennery pled guilty before me to both counts and, after hearing from both parties, I sentenced her to two years in state prison.

Counsel for People
Matthew Hardy
San Diego District Attorney
330 West Broadway Avenue
San Diego, CA 92101
(619) 531-4255

Counsel for Defendant
Alvaro Gonzalez
San Diego Public Defender
495 La Tortuga Drive, Suite 100
Vista, CA 92081
(760) 945-4072

9. *People v. Gonzalez* (SCN416003/SCN422190) (S.D. Cty. Super. Ct. 2020, 2021)

Mr. Gonzalez had a ghost gun and was showing it to friends while they were all smoking marijuana together. Mr. Gonzalez then let a 16-year-old hold the gun, who took it into a different room. While holding the gun and smoking marijuana, the 16-year-old shot and killed the 18-year-old victim. After the shooting, Mr. Gonzalez hid the gun before law enforcement arrived. The parties negotiated the case and entered in a plea agreement where Mr. Gonzalez pled guilty before me to charges of accessory after the fact and child endangerment. The parties both

agreed that Mr. Gonzalez would receive probation. While on probation and being supervised in the community, Mr. Gonzalez, during an argument with his girlfriend, assaulted a priest who intervened. Mr. Gonzalez was under the influence of alcohol at the time. Mr. Gonzalez entered a guilty plea to assault with force likely to inflict great bodily injury before me and I ultimately sentenced him to five years and eight months in state prison.

Counsel for People
Keith Watanabe
San Diego District Attorney
325 South Melrose Drive, Suite 5000
Vista, CA 92081
(760) 806-4089

Counsel for Defendant
Charles Millioen
San Diego Alternate Public Defender
495 La Tortuga Drive, Suite 120
Vista, CA 92081
(760) 940-6406

10. *People v. Johnson* (SCN404012) (S.D. Cty. Super. Ct. 2020)

Mr. Johnson was driving under the influence, reaching speeds over 100 miles per hour on the freeway, and struck and killed a motorcyclist. He pled guilty before me to charges of gross vehicular manslaughter, driving under the influence of alcohol and with a blood alcohol level exceeding the legal limit to drive in California, along with admissions that he personally caused great bodily injury to the victim. I presided over the sentencing hearing, heard arguments from both parties and the decedent's family, and sentenced Mr. Johnson to six years in state prison.

Counsel for People
David Uyar
San Diego District Attorney
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(760) 806-4065

Counsel for Defendant
Gregory Garrison
Law Office of Gregory Garrison
402 West Broadway, Suite 400
San Diego, CA 92101
(619) 615-4216

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

I have issued no written opinions.

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

None.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have issued no written opinions.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have never sat by designation on any 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.

California law (Code of Civil Procedure Section 170.6) allows each party up to one peremptory challenge of a judge by filing an affidavit of prejudice without any specification of grounds for the alleged prejudice. The sitting judge reviews for timeliness and other procedural requirements but a timely, procedurally correct peremptory challenge under this section must be automatically granted. No party has ever requested my recusal on a case.

Aside from peremptory challenges, California Code of Civil Procedure Section 170.1 states that a judge must recuse himself or herself for among several different reasons, if the judge believes his or her recusal would further the interests of justice. Using this basis, since I've been a judge, I have recused myself from three cases and in each case, I recused myself sua sponte.

In each of the cases, I recused myself because I had been the prosecuting attorney for each of the Defendants' previous convictions. I immediately disclosed to the parties that I previously prosecuted the Defendants and recused myself from the new cases.

For each of those recusals, I initially examined the case and the attorneys to determine whether a conflict of interest or appearance of conflict existed such that I would be required to recuse or disclose the conflict pursuant to the California Code of Civil Procedure, the Code of Judicial Ethics, and other guidance on judicial ethics.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and

responsibilities.

None.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have never served as a clerk to a judge.

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;

Fall 2004
San Diego Public Defender's Office
450 B Street # 900
San Diego, California 92101
Law Clerk

December 2004 – January 2005
Exclusively Legal
402 West Broadway, Suite 2500
San Diego, California 92101
Contract Attorney

2005
San Diego City Attorney's Office
1200 3rd Avenue, Suite 700
San Diego, California 92101
Deputy City Attorney

2006 – 2017
San Diego District Attorney's Office
Hall of Justice
330 West Broadway
San Diego, California 92101
Deputy District Attorney

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have 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.

In 2005, I worked as a Deputy City Attorney, prosecuting misdemeanor cases in the City of San Diego. In my year at the City Attorney's Office, I tried 19 jury trials, many of them driving under the influence cases.

From 2006 to 2017, I was a trial attorney at the San Diego District Attorney's Office. Of that time, I spent more than eight years prosecuting cases in the gang prosecution unit. I represented the People and tried over 30 jury trials and over 10 court trials, including several homicides, violent gang shootings, assaults, robberies, and sexual assault cases.

Since 2017, I have been a judicial officer presiding over several different criminal assignments.

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

As a government attorney my entire legal career before becoming a judicial officer, I have always represented the People of the State of California. I have never had an individual client.

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: 0%
   2. state courts of record: 100%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 0%
   2. criminal proceedings: 100%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried 59 jury trials and approximately 10 bench trials to verdict during my career. Of those cases, I was sole counsel in all but one. In that one case, I was lead counsel.

i. What percentage of these trials were:
   1. jury: 86%
   2. non-jury: 14%

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 never practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *People v. Ware et al.*, SCD255884 in San Diego Superior Court, (Valentine, J.) 52 Cal. App. 5th 919 (2020)

Starting in 2012, I began investigating numerous shootings and assaults committed by members of a particular gang. In 2014, along with law enforcement, we were able to identify several individuals who were responsible for these shootings, and three defendants were charged with conspiracy to commit murder and a criminal gang conspiracy, and several individuals were charged with attempted murder, assault with a firearm, and unlawful possession of a firearm. The criminal gang conspiracy charge had not been used in the state before we charged it in this case. Because of that, there were several legal issues litigated by the parties throughout the prosecution of this case. There

were hundreds of thousands of reports and more than four hundred media discs containing interviews, photos, evidence, etc.

The trial began in March 2016, two years after the defendants were arrested and charged. The defendants were alleged to be members of a violent subset of a street gang whose members promoted and encouraged the killing of rival gang members. Members of the subset killed rival gang members as well. There was a total of eighteen shootings committed by members of this group. The trial lasted nearly ten weeks as more than 140 witnesses were called to testify. The jury found all three defendants guilty of conspiracy to commit murder, the criminal gang conspiracy charge, and of all the individual shootings that they were alleged to have committed.

I argued pre-trial motions, conducted witness examinations for over 70 witnesses, cross-examined several defense witnesses, presented the closing argument in the case and argued at the sentencing hearing. Defendant Ware was sentenced to 27 years plus 40 years to life. Defendant Simpson was sentenced to 36 years plus 25 years to life. Defendant Hoskins was sentenced to 25 years to life.

On appeal, the criminal gang conspiracy charge for Simpson and Hoskins was overturned because the court held that a conviction for the specific crime committed by a member of the Defendant's gang was not proven. At trial, we had argued, and the judge agreed, that we did not need to submit proof of a conviction for a specific crime, but that the jury had to make a finding that a specific crime was committed by a member of Defendant's gang. The case was remanded for resentencing and all remaining charges were upheld. In December 2020, the California Supreme Court granted Hoskins' petition for review as to whether there was sufficient evidence to support his conviction for conspiracy to commit murder. Oral argument was held on September 6, 2022.

Opposing Counsel
Stephen Cline
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(619) 338-4640

Jose Badillo
Law Offices of Jose Badillo
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San Diego, CA 92101
(619) 234-2439

Manuel Ramirez
Law Offices of Manuel Ramirez
185 West F Street, Suite 100
San Diego, CA 92101
(619) 630-8382

Co-Counsel
Christopher Lawson
San Diego District Attorney
330 West Broadway, Suite 900
San Diego, CA 92101
(619) 441-4854

Dates of representation: Approximately 2014 - 2016

2. *People v. Owens*, SCD240446 in San Diego Superior Court (Deddeh, J.)

In this case, one of the victims and a different male got into an argument over a cell phone. All the individuals involved were gang members. One of the victims sold a cell phone to another individual. The phone stopped working a few days after the sale. The buyer of the phone became very upset, and he and the seller of the phone got into an argument that escalated into a fight and then to murder – all during a three-day span. The night before the murder, the buyer of the phone shot at the victim and the victim had his gun stolen from his car by Mr. Owens. The day of the murder, the victim and his friend, who was Mr. Owens' cousin, went to Mr. Owens' apartment to meet the buyer of the phone. While at the apartment Mr. Owens and his cousin got into an argument and then Mr. Owens went into his apartment, retrieved the gun he stole from the victim the day before and opened fire on both victims. A second male also shot an automatic firearm at the victims, flushing them out from behind a car where they were hiding. Mr. Owens then chased the victims down and executed both, shooting them in the back of the head as they tried to run away. Both victims had very violent reputations for assaults and none of the witnesses were cooperative. Defendant was convicted of two counts of first-degree murder and sentenced to life in prison. I was sole counsel and handled all aspects of the case, including preliminary hearing, pretrial motions, the jury trial and sentencing.

Opposing Counsel
Gloria Collins
Law Offices of Gloria Collins
16050 Kay Dee Lane
Ramona, CA 92065
(619) 252-9611

Dates of representation: Approximately 2014 – 2015

3. *People v. Guillory*, SCD243864 in San Diego Superior Court (D. Gill, J.)

In this case Mr. Guillory and his girlfriend were at a liquor store where the victim flirted with Mr. Guillory's girlfriend. The girlfriend became upset and told Mr. Guillory. Mr. Guillory and the victim got into an argument, and then went outside where Mr. Guillory shot the victim once in the leg and walked away.

While investigating this shooting, officers located and arrested Mr. Guillory in public, as he left his house and attempted to drive away. Officers eventually obtained a search warrant to search Mr. Guillory's house for the clothing worn during the shooting and the gun used. Officers found the clothing worn during the shooting, indicia of narcotic sales, and five firearms including a rifle with a scope and a tripod. Further, officers located a safe in Mr. Guillory's bedroom and after obtaining a warrant to search the safe, located an additional firearm, $28,000 in cash, hundreds of tablets/pills of controlled substances, nearly 10 grams of methamphetamine, and nearly 4 pounds of rock cocaine. Mr. Guillory was charged mayhem, assault with a firearm, unlawful possession of a firearm by a convicted felon and multiple counts of drug sales. The case proceeded to a jury trial and Mr. Guillory was convicted of all counts. Mr. Guillory was sentenced to 53 years 4 months to life in state prison.

I was sole counsel and handled all aspects of the case, including preliminary hearing, arguing against the motion to dismiss, and jury trial, including opening statement, direct examination of more than 10 witnesses, cross-examination of two witnesses, and closing argument.

Opposing Counsel
Frederick McClelland
Law Offices of Frederick McClelland
11318 Creekstone Lane
San Diego, CA 92128
(619) 230-0692

Dates of representation: Approximately 2013 – 2014

4. *People v. Roberson et al.*, SCD225297 in San Diego Superior Court (Rogers, J.)

In this case, two groups of rival gang members got into an argument in the street at 1:00 in the morning as several clubs and bars were closing in the Gaslamp District of downtown San Diego. The argument turned into a physical fight. Since all the local clubs and bars were closing and it was Memorial Day weekend, there were hundreds of people on the street at the time. During the fight, one of the gang members pulled out a gun and began firing at the rival group. He shot three people: a rival gang member several times in the chest and torso; an innocent bystander once in the back as he was walking away; and an innocent young woman, who was out celebrating her twenty-first birthday, in the head, killing her instantly. I worked on the case with homicide detectives for months and initially I charged one person with murder. After continuing the investigation using a wiretap, I was able to charge one additional person based on the evidence. Detectives and I continued to investigate and conducted another wiretap investigation, and we presented the case to a grand jury. The grand jury returned indictments of four additional people. After a lengthy period, the case eventually went to trial. One of the four defendants pled guilty before trial began. The trial lasted ten weeks and more than 100 witnesses testified. I was sole counsel and handled all aspects of the case, including grand jury proceedings, preliminary hearing, pretrial motions, and all phases of the jury trial, including sentencing after trial. I conducted direct examination of

more than 90 witnesses, cross examination of more than 10 witnesses and closing argument. Ultimately, the jury convicted all three defendants of first-degree murder. Defendant Roberson was sentenced to 189 years to life plus 20 years. Defendant Craig was sentenced to 75 years to life plus 11 years. Defendant Scott was sentenced to 35 years to life.

In 2014, in an unrelated case, *People v. Chiu*, 59 Cal. 4th 155 (2014), the California Supreme Court ruled that an accomplice could not be convicted of first-degree murder under a natural and probable consequences theory, thus invalidating the theory of liability under which I proceeded under in this case. Based on that change, in 2016, the Appellate Court reduced the sentence for everyone to second degree murder and remanded the case to the trial court for resentencing. Defendant Roberson was resentenced to 159 years to life plus 15 years. Defendant Craig was resentenced to 65 years to life plus 11 years and eight months. Defendant Scott was resentenced to 15 years to life.

Opposing Counsel
Hon. Frank Birchak
San Diego Superior Court
P.O. Box 122724
San Diego, CA 92101
(619) 844-2555

John Mitchell
Law Offices of John Mitchell
3098 Rue Dorleans Unit 330
San Diego, CA 92110
(619) 224-3023

Timothy Chandler
Law Offices of Timothy Chandler
110 West C Street, Suite 1300
San Diego, CA 92101
(619) 645-5245

Dates of representation: Approximately 2011 – 2013

5. *People v. Sanchez et al.*, SCD242421 in San Diego Superior Court (Hanoian, J.)

Both defendants were charged with two counts of attempted murder. They were members of a street gang and went into a rival gang's territory, where they saw a gathering of several people who were attending a memorial for an individual who had been killed the day before. The two defendants then fired 15 rounds at the group of bystanders at the memorial, striking the victim once. The victim of this shooting was the son of the man killed the day before. Both defendants ultimately pled guilty before trial. I was sole counsel and handled all aspects of the case, including preliminary hearing and

ultimately sentencing after the entry of guilty pleas. Both defendants were sentenced to 31 years in state prison.

Opposing Counsel
Patrick Dudley
Law Offices of Patrick Dudley
113 West G Street # 405
San Diego, CA 92101
(619) 233-7334

Brooke Lafrance
Alternate Public Defender
451 A Street, Suite 1200
San Diego, CA 92101
(619) 446-2900

Dates of representation: 2012

6. *People v. Riley*, SCD226240 in San Diego Superior Court (Halgren, J.), *Riley v. California*, 573 US 373 (2014)

This was an attempted murder case where Mr. Riley and two fellow gang members were accused of attempted murder for shooting at a rival gang member in a residential neighborhood. Officers searched Mr. Riley's cell phone incident to arrest and located several photos of him and his co-defendants displaying gang signs. They were able to use software to unlock the cell phone, locating photos of a maroon-colored car used in the shooting. There were also videos of the co-defendants. That search was challenged pretrial and a motion to suppress was denied by the San Diego Superior Court, based on California Supreme Court precedent. Mr. Riley was convicted at trial and later challenged the search of the cell phone incident to arrest. After trial, Mr. Riley appealed to the California Appellate Court and his appeal was denied. The California Supreme Court declined to hear the case and Mr. Riley then appealed to the United States Supreme Court, which granted certiorari and overruled the California Appellate Court in *Riley v. California*, 573 U.S. 373 (2014). After the Supreme Court's ruling, the case was remanded back to the California Appellate Court and, after additional briefing, Mr. Riley's conviction was upheld by the appellate court as the photos from the phone had a de minimis impact in the case compared to the totality of the evidence and was therefore harmless error. I was sole counsel and handled all aspects of the jury trial and sentencing hearing. I did not handle any aspects of the appeal. Mr. Riley was sentenced to 15 years to life in prison.

Opposing Counsel
Edward Kinsey
Law Offices of Edward Kinsey
7660-H Fay Avenue # 303
La Jolla, CA 92037

(619) 851-2144

Dates of representation: 2010 – 2011

7. *People v. Dickens*, SCD214245 in San Diego Superior Court (Danielson, J.)

In this case, the defendant and several friends were having a party at a local beach. While at the party they all drank substantial amounts of alcohol. After the party was over, defendant and five of his friends got into defendant's truck to leave. The victim got into the bed of the defendant's truck, while the other four occupants got inside of the cab. While driving away from the beach, defendant started swerving his truck several times to scare the victim who was lying in the bed of the truck. While driving very fast, defendant attempted to swerve his truck one final time and lost control of the truck and slammed into a tree. The victim in the bed of the truck suffered severe head trauma and died instantly. The other four passengers were all severely injured, suffering a broken back, a fractured femur, and facial lacerations. The defendant pled guilty to gross vehicular manslaughter and driving under the influence causing injury to another prior to trial and was sentenced to eight years in state prison. I was sole counsel and handled all aspects of the case, including preliminary hearing, arguing against a motion to dismiss, and ultimately the entry of a guilty plea and sentencing.

Opposing Counsel
Nicholas Depento
Law Office of Nicholas Depento
501 West Broadway, Suite A-410
San Diego, CA 92101
(619) 236-1151

Dates of representation: 2009

8. *People v. Echols*, SCD220048 in San Diego Superior Court (Danielsen, J.)

Mr. Echols and the victim were friends and both members of the United States Navy. They were at Mr. Echols's apartment playing video games and smoking marijuana. Mr. Echols had several guns, similar to the guns used in the video game, and brought them out to show the victim. Mr. Echols started playing with the guns and shot the victim in the chest while the victim was seated in a chair. Mr. Echols waited approximately 1 hour before calling 911 for assistance. The victim died before paramedics arrived. Mr. Echols pled guilty to voluntary manslaughter before trial and at his sentencing hearing, I argued for prison, but the Court granted his request for probation. I handled all aspects of the case, including arraignment, the entry of the guilty plea and sentencing.

Opposing Counsel
Charles Goldberg
CLG Defense Group
3328 Crown Point Drive

San Diego, CA 92109
(619) 297-1111

Dates of representation: Approximately 2009

9. *People v. McCullough*, SCD213537 in San Diego Superior Court (Shamoon, J.)

The victim and defendant had both attended a party in downtown San Diego. They were waiting outside for a taxi and the victim was in line ahead of the defendant. Defendant attempted to push his way in, and the victim told him that the next cab was his. Defendant laughed at the victim and when the next cab pulled up, defendant pushed the victim out of the way and then sucker punched him, knocking him to the ground where the victim struck his head on the curb, suffering massive head trauma, including swelling and bleeding on his brain. The victim was placed in a medically induced coma for several days. The victim had both marijuana and cocaine in his system. He also had a high blood alcohol content and, minutes before he was punched, he was seen trying to punch someone else. Defendant was convicted of assault and was found to have personally inflicted great bodily injury on the victim. He was sentenced to probation and a suspended sentence. I was sole counsel and handled all aspects of the jury trial, including opening statement, direct examination of witnesses, cross-examination of witnesses, closing arguments, and sentencing.

Opposing Counsel
David Baker
Rudolph Baker & Associates
419 19th Street
San Diego, CA 92102
(619) 235-0010

Dates of representation: Approximately 2009

10. *People v. Hardman*, SCN233447 in San Diego Superior Court (A. Katz, J.)

In this case, the victim suffered from developmental disabilities and was lured over to a house in Escondido by a female at the request of Mr. Hardman. Inside the house's garage the victim was attacked by Mr. Hardman and two other individuals. Mr. Hardman was two weeks shy of his 18th birthday at the time. Mr. Hardman had the victim lured over to the house, because the victim told the owner of the home that Mr. Hardman and others were using drugs at the house. Mr. Hardman hit the victim in the face several times and struck him with a golf club, knocking the victim to the ground. While on the ground, Mr. Hardman and one of his companions removed all the victim's property from his person, including his watch, necklace, wallet, cell phone and car keys. They then got the victim's car and while holding the victim at knife point, tied up his hands and feet with zip ties, covered his face with a beanie and gagged his mouth. Mr. Hardman and his companions then forced the victim into the trunk of the victim's car and drove him to an isolated area near a lake, tied the victim to a tree and left him there late at night. The victim was able

to free himself and walked around several hours until he found a house where he was able to call 9-1-1. The victim suffered facial fractures and head injuries. Mr. Hardman pled guilty assaulting the victim and was sentenced to five years in state prison.

I was sole counsel and handled all aspects of the case including a fitness hearing in juvenile court where the Court ultimately found that Mr. Hardman was not fit to remain in juvenile court and remanded the case to the Superior Court. I also conducted the preliminary hearing and ultimately the entry of a guilty plea and sentencing hearing.

Opposing Counsel
Brooke Lafrance
Alternate Public Defender
451 A Street, Suite 1200
San Diego, CA 92101
(619) 446-2900

Dates of representation: Approximately 2007

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 Deputy District Attorney, in addition to trials, I have been involved in numerous law enforcement investigations, many of which required wiretaps, the use of confidential informants and grand jury proceedings. Many of these investigations led to criminal prosecution in numerous cases.

Further, while a Deputy District Attorney, I conducted numerous in-house trainings on the law of accomplice liability and the admissibility of social media evidence. I was a member of the hiring committee for law clerks and new attorneys. I was also a mentor to several newer attorneys and gave trainings to new attorneys as part of their initial training in the office.

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.

        My wife is a lawyer at the San Diego City Attorney's Office's Civil Advisory Unit. In order to avoid any appearances of conflicts of interest, I would recuse myself from all cases involving the San Diego City Attorney's Office. I would inform the Clerk of the Court of this potential conflict and instruct the Clerk that these cases should not be assigned to me. If, however, a case was assigned, I would orally inform the parties of the conflict and recuse myself.

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

        If confirmed as a District Judge, I would handle any matters involving actual or

potential conflicts of interest by applying the Code of Conduct for United States Judges, 28 U.S.C. § 455, and all applicable policies and procedures of the United States Courts.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While at the San Diego City Attorney's Office and the San Diego District Attorney's Office, I was not permitted to provide any pro bono legal representation to outside organizations or individuals. Instead, I served the community through programs like Project LEAD, where we worked with fifth grade students in socioeconomically disadvantaged communities and taught them lessons on various topics, including budgeting, avoiding gangs, and planning for college.

I have spoken to at-risk youth at several middle and high schools about my background and the challenges I have overcome to encourage them make good decisions and pursue higher education.

Further, from 2007 to 2009, while a board member of the California Young Lawyer's Association, I helped lead a project in San Diego to encourage new and young lawyers to become involved with advocacy for foster youth. This program was funded by a grant from the California State Bar Foundation. After obtaining the grant, I helped to organize training sessions in conjunction with the San Diego Volunteer Lawyer's Program to recruit and train young lawyers to provide advocacy services and assistance to foster children transitioning out of the foster care system.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 30, 2021, I submitted my application for the U.S. District Court for the Southern District of California to Senator Feinstein's Judicial Advisory Committee. On February 19, 2021, I applied to the Office of Senator Padilla. On March 15, 2021, I was interviewed by Senator Feinstein's local advisory committee. On May 12, 2021, I met with the chair of Senator Padilla's judicial

evaluation commission. On August 24, 2021, I was interviewed by Senator Padilla's local evaluation commission. On November 16, 2021, I was interviewed by the statewide chair of Senator Feinstein's advisory committee. On January 28, 2022, I was interviewed by the statewide chair of Senator Padilla's commission. On February 18, 2022, I was interviewed by counsel for Senator Padilla. On March 3, 2022, I was interviewed by Senator Padilla. On March 11, 2022, I interviewed with attorneys from the White House Counsel's Office. Since March 13, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 14, 2022, 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).

   Amy Lefkowitz Solomon (current)

   Amy Lefkowitz (maiden)

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

   Assistant Attorney General
   Office of Justice Programs
   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 of Justice Programs
   810 7th Street, NW
   Washington, DC 20531

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

   February 1, 1969; Fort Knox, KY

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

   Harvard Kennedy School of Government, 1994-1997
   Master in Public Policy, January 1997

   University of Michigan, 1987-1991
   Bachelor of Arts (English), May 1991

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.

5/21 - Present ***Principal Deputy Assistant Attorney General***
Office of Justice Programs, US Department of Justice
810 7th Street, NW, Washington, DC 20531

2017 – 2021 ***Vice President of Criminal Justice***
Arnold Ventures
1776 I St, NW, Washington, DC 20006

2015 – Jan. 2017 ***Director of Policy***
2010 – 2015 ***Senior Advisor to the Assistant Attorney General***
2016 – Jan. 2017 ***Executive Director, Federal Interagency Reentry Council***
Office of Justice Programs, US Department of Justice
810 7th Street, NW, Washington, DC 20531

2010 – 2011
(5 months) ***Acting Director, Office of Communications***
Office of Justice Programs, US Department of Justice
810 7th Street, NW, Washington, DC 20531

2004 – 2010 ***Senior Research Associate*, Justice Policy Center, Urban Institute**
2000 – 2004 ***Policy Associate*, Justice Policy Center, Urban Institute**
2100 M Street, NW, Washington, DC 20037

1997 – 2000 ***Presidential Management Intern* (Predecessor of the Presidential Management Fellowship) and Policy and Program Analyst**
National Institute of Justice, US Department of Justice
810 7th Street, NW, Washington, DC 20531

1998 – 1999 ***Acting Director of Strategic Planning***
National Institute of Justice, US Department of Justice
810 7th Street, NW, Washington, DC 20531

1997 ***Research Analyst*, Mind/Brain/Behavior Program of Harvard University**
Cambridge, MA
**may have been unpaid*

1996-1997 ***Research Associate*, BOTEC Analysis Corporation**
Cambridge, MA

1992 – 1994 ***Program Coordinator*, Alternative Sentencing Project**
United Way of Central Massachusetts and YOU, Inc.
81 Plantation Street, Worcester, MA 01604

1991 – 1992 ***VISTA Volunteer*, Vermont Department of Corrections**
50 Cherry Street, Burlington, VT 05401

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

   I have not served in the U.S. military. I am not subject to selective service registration requirements.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   National Employment Law Project Honor Role "for exemplary public service and leadership on behalf of America's workers," November 2016

   National Institute of Corrections "Pioneer Award," February 2015

   Nominated by Attorney General Eric Holder for the 2014 Samuel J. Heyman Service to America Medal

   Attorney General's Award for *Exceptional Leadership to the Cabinet-Level Reentry Council*, October 2011

   Montgomery County Department of Correction and Rehabilitation Certificate of Special Appreciation, May 2007

   Office of Justice Programs Assistant Attorney General Award, December, 1999

   National Institute of Justice Special Act Award, April, 1999

   National Institute of Justice Special Act Award, March, 1998

   Presidential Management Intern, Office of Personnel Management, 1997-1999

   Nominee, Outstanding Policy Analysis Exercise at the Kennedy School of Government. "Analyzing Serious Assaults in Lowell: Opportunities for a Collaborative Crime Control Effort." May 1997.

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

N/A

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.

N/A

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.

N/A

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.

Inaugural Member
Council on Criminal Justice, 2020–2021

Steering Committee
Smart on Conference Innovations Conference, 2018-2019

Advisory Board Member
Clean Slate Initiative, 2019–2021

Founding Advisory Board Member
Removing Barriers to Economic Opportunity for Americans with Criminal Records (CAP), 2017
(Clean Slate Predecessor)

Advisory Board Member
National Institute of Corrections, Bureau of Prisons, 2015–2017

Executive Session and Steering Committee Member
Executive Session on Community Corrections at Harvard's Kennedy School of Government, 2013–2016

National Advisory Board Member
Pathways from Prison to Postsecondary Education, 2013–2014

Founding Advisory Board Member
Prisoner Reentry Institute at John Jay College of Criminal Justice, 2005–2010

Founding Advisory Board Member
Center for Community Safety at Winston-Salem State University, 2001-2010

Advisory Board Member for the Council of State Governments
National Reentry Resource Center, 2009-2010
Reentry Policy Center, 2008-2009
Community Corrections Research Project, 2007-2009
Reentry Policy Guide Project, 2007-2008
Reentry Financial Obligations Project, 2005-2007
Reentry Policy Council (Steering Committee, Founding Member), 2001-2006

Advisory Board Member
National Institute of Corrections, Advisory Group for Paroling Authorities, 2009-2010

Advisory Group Member
Pew Charitable Trusts Public Safety Performance Project on Community Supervision, 2008

Advisory Board Member
Family Justice National Family Outcomes, 2008-2009

Evaluation Advisory Board Member
Michigan Department of Corrections, Prisoner Reentry Initiative, 2008-2010

Reviewer
Pew Charitable Trusts Public Safety Performance Project Report on Concentrated Supervision, 2008

Faculty
National Governors Association Prisoner Reentry Policy Academy, 2003-2008

Judge
Innovations in American Government Awards, Harvard Kennedy School of Government, 1997-1999

Board of Directors
Dismas House of Central Massachusetts, 1992-1995

b. Indicate whether any of these organizations listed in response to **11**a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action

you have taken to change these policies and practices.

To my knowledge, none of these organizations 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:

Solomon, A, (May 17, 2022). OJP Commemorates National Police Week: Honoring Service and Sacrifice (Office of Justice Programs Blog).

Solomon, A, (April 21, 2022). Introducing Second Chance Fellows John Bae and Angel Sanchez (Office of Justice Programs Blog).

Solomon, A, (September 28, 2021). DOJ Calls for New Research on Racial Disparities in the Justice System (OpEd). The Crime Report.

Solomon, A, (November 1, 2021). Authored the forward (pages 7-8) to volume, "Desistence from Crime: Implications for Research, Policy, and Practice." National Institute of Justice.

Solomon, A, (July 22, 2021). Statement on CDC Guidance to Reduce the Spread of Covid-19 in Confinement Facilities. Office of Justice Programs.

Solomon, A, (September 21, 2020). Congress Should Open COVID Recovery to People with Criminal Justice Records (OpEd). The Washington Examiner.

Solomon, A, (January 19, 2019). US Needs Bold Reforms to Transform Probation and Parole (OpEd). The Hill.

Solomon, A, (December 20, 2018). Germany Reckoned with its Past to Build a Better Justice System: America Should Too (OpEd). The Marshall Project.

Primary author of The Federal Interagency Reentry Council: A Record of Progress and a Roadmap for the Future (August 15, 2016).

Solomon, A. (March 2015). *Prisoner Reentry: Why It Matters and What U.S. Attorneys Can Do*. Washington, DC: United States Attorneys' Bulletin.

Solomon, A. (June 14, 2012). *In Search of a Job: Criminal Records as Barriers to Employment*. Washington, DC: NIJ Journal.

Published interview forms chapter in book, Trial and Error in Criminal Justice Reform: Learning from Failure, for perspective on parole and reentry issues. Urban Institute Press, 2010.

Jannetta, J., Elderbroom, B., Solomon, A., Cahill, M., Parthasarathy, B., and Burrell, W. (June 8, 2010). An Evolving Field: Findings from the 2008 Parole Practices Survey. Washington, DC: The Urban Institute.

Brazzell, D., Crayton, A., Mukamal, D., Solomon, A., and Lindahl, N. (September 23, 2009). From the Classroom to the Community: Exploring the Role of Education during Incarceration and Reentry. Washington, DC: The Urban Institute.

Solomon, A, (May 22, 2008). Helping Former Inmates Can Reduce Crime in Philadelphia (OpEd). Philadelphia Inquirer.

Solomon, A., Osborne, J., Winterfield, L., Elderbroom, B., Burke, P., Stroker R., Rhine, E., and Burrell, B. (December 2, 2008). Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes. Washington, DC: The Urban Institute.

Solomon, A., Jannetta, J., Osborne, J., Winterfield, L., Elderbroom, B., Burke, P., Stroker R., Rhine, E., and Burrell, B. (December 3, 2008). Putting Public Safety First: 13 Strategies to Enhance Supervision and Reentry Outcomes. Washington, DC: Pew Charitable Trusts.

Jannetta, J., LaVigne, N., Solomon, A., and Winterfield, L. (2008). *Policymaking and the New President: Improve Public Safety and Save Money through Better Reintegration of Ex-Offenders*. Washington, DC: The Urban Institute. (copy not available).

Yahner, J., Visher, C., Solomon, A. (July 30, 2008) Returning Home on Parole: Former Prisoners' Experiences in Illinois, Ohio, and Texas. Washington, DC: The Urban Institute.

Brooks, L., Solomon, A., Kohl, R., Osborne, J., Reid, J., McDonald, S., Hoover, H. (April 30, 2008) Reincarcerated: The Experiences of Men Returning to Massachusetts Prisons. Washington, DC: The Urban Institute.

Kohl, R., McDonald, S., Hoover, H., and Solomon, A. (April 2008) Massachusetts Recidivism Study: A Closer Look at Releases and Returns to Prison. Washington, DC: The Urban Institute.

Solomon, A., Osborne, J., LoBuglio, S., Mellow, J., and Mukamal, D. (May 1, 2008) Life after Lockup: Improving Reentry from Jail to the Community. Washington, DC: The Urban Institute.

Mellow, J., Mukamal, D., LoBuglio, S., Solomon, A., and Osborne, J. (May 7, 2008) The Jail Administrator's Toolkit for Reentry. Washington, DC: The Urban Institute.

Solomon, A., Palmer T., Atkinson, A., Davidson, J., and Harvey, L. (September 14, 2006). Prisoner Reentry: Addressing the Challenges in Weed and Seed Communities. Washington, DC: The Urban Institute.

Solomon, A. (Spring 2006). Does Parole Work? Research Findings and Policy Opportunities. *Perspectives* (Vol. 30, No. 2).

Solomon, A., Visher, C., La Vigne, N., and Osborne, J. (January 2006). Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio. Washington, DC: The Urban Institute.

La Vigne, N., Solomon, A., Beckman, K., and Johnson, K. (March 2006). Prisoner Reentry and Community Policing: Strategies for Enhancing Public Safety. Washington, DC: Office of Community Oriented Policing Services, Department of Justice.

Brooks, L., Solomon, A., Keegan, S., Kohl, R., and Lahue, L. (March 2005). Prisoner Reentry in Massachusetts. Washington, DC: The Urban Institute.

Solomon, A., Kachnowski, V., and Bhati, A. (2005). Does Parole Work? Analyzing the Impact of Postprison Supervision on Rearrest Outcomes. Washington, DC: The Urban Institute.

Solomon, A. and G. Thomson. (October 1, 2004). Prisoner Reentry in Michigan. Washington, DC: The Urban Institute.

Solomon, A., Johnson, K., Travis, J., and E. McBride. (October 1, 2004). From Prison to Work: The Employment Dimensions of Prisoner Reentry. Washington, DC: The Urban Institute.

Keegan, S. and A. Solomon. (October 1, 2004). Prisoner Reentry in Virginia. Washington, DC: The Urban Institute.

Solomon, A., Waul, M., VanNess, A., and J. Travis. (January 27, 2004). Outside the Walls: A National Snapshot of Community-Based Prisoner Reentry Programs.

Watson, J., Solomon, A., La Vigne, N. G. and J. Travis. (March 19, 2004). A Portrait of Prisoner Reentry in Texas. Washington, DC: The Urban Institute.

Travis, J., Cincotta, E., and Solomon, A. (2003) Families Left Behind: The Hidden Costs of Incarceration and Reentry. Washington, DC: The Urban Institute.

Travis, J., Keegan, S., Cadora, E., with Solomon, A., and C. Swartz. (November 2003). A Portrait of Prisoner Reentry in New Jersey. Washington, DC: The Urban Institute.

Waul, M., Travis, J., and A. Solomon. (2002). *The Effect of Incarceration and Reentry on Children, Families, and Communities.* Washington, DC: The Urban Institute.

Festen, M., Waul, M., Solomon, A., and Travis, J. (2002). From Prison to Home: The Effect of Incarceration on Children, Families, and Communities. Washington, DC: U.S. Department of Health and Human Services.

Mears, D., Lawrence, S., Solomon, A., and M. Waul. *Prison-Based Programming: What It Can Do and Why It's Needed*. (2002). *Corrections Today Magazine*, Vol. 64, No. 2, pp. 66-71. Reprinted in *Criminal Justice Concepts and Issues: An Anthology* (2004). Eskridge, Chris, ed. Roxbury Publishing Co., Los Angeles, CA.

Travis, J., Robinson, L., and A. Solomon. (Spring 2002). Prisoner Reentry: Issues for Practice and Policy. Criminal Justice 17(1): 12-18.

Travis, J., Solomon, A., and M. Waul. (June 1, 2001). From Prison to Home: The Dimensions and Consequences of Prisoner Reentry. Washington, DC: The Urban Institute.

Gouvis, C., Johnson, C., DeStefano, C., Solomon, A., and M. Waul. (March 2001). Violence in the District of Columbia: Patterns from 1999. Washington, DC: The Urban Institute.

Kleiman, M., Epstein, J., Solomon, A., Forcier, M., Boyum, D., Wilson, R., and L Heussler. (October 1, 1996). Criminal Justice in Massachusetts: Putting Crime Control First. The Massachusetts Institute for a New Commonwealth.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify all reports, memoranda, or policy statements and do not believe I have additions to the list provided above. Despite my searches, there may be other materials that I have been unable to identify, find, or remember.

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

I have done my best to identify any testimony, official statements or other communications related, in whole or in part, to matters of public policy or legal interpretation, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find, or remember. I have located the following:

Task Force Hearing on Restoration of Rights and Status after Conviction, sponsored by the National Association of Criminal Defense Lawyers, expert testimony. Washington, DC, February 21, 2013.

The Impact of Criminal Background Checks and the EEOC's Conviction Records Policy on the Employment of Black and Hispanic Workers, sponsored by the US Commission on Civil Rights, expert testimony submitted. Washington, DC, December 7, 2012.

Equal Employment Opportunity Commission (EEOC) meeting on *Arrest and Conviction Records as a Barrier to Employment*, expert testimony. Washington, DC, December 7, 2011.

Senate Judiciary Committee, Subcommittee on Crime and Drugs, expert testimony, "The First Line of Defense: Reducing Recidivism at the Local Level." Washington, DC, November 5, 2009.

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. Despite my searches, there may be other materials that I have been unable to identify, find, or remember. I have located the following:

National Summit to Reduce Violence and Strengthen Communities, welcoming remarks. Remarks here. May 17, 2022.

National Crime Victims' Service Awards Ceremony. Virtual, remarks here. Washington, DC, April 29, 2022.

Second Chance Pell Rollout, Roundtable with U.S. Secretary Miguel Cardona. Remarks here. Washington, DC, April 26, 2022.

Reentry 2030 National Launch: Advancing Successful Reintegration for Every Person, opening remarks. Remarks/video here. April 21, 2022.

Second Chance Month 2022, opening remarks. Virtual on the National Reentry Resource Center. Remarks/video here. April 1, 2022.

Fiscal Year 2023 President's Budget Rollout – Stakeholder Briefing. Remarks here. Washington, DC, March 29, 2022.

National AMBER Alert/AMBER Alert in Indian Country Virtual Symposium, welcoming remarks. Virtual, remarks here. March 29, 2022.

12th Annual National Mentoring Summit, plenary speaker. Virtual, remarks here. January 27, 2022.

Comprehensive Opioid, Stimulant, and Substance Abuse Program (COSSAP) National Conference, welcoming remarks. Virtual, remarks here. November 16, 2021.

OJJDP State Relations and Assistance Division National Training Conference, welcoming remarks. Virtual, remarks here). November 8, 2021.

2021 Joint Training Conference for VOCA Victim Assistance and Victim Compensation Administrators, welcoming remarks. Virtual, remarks here. September 20, 2021.

Georgetown University's Center for Juvenile Justice Reform's 2021 Janet Reno Forum, plenary speaker. Virtual, remarks here. July 26, 2021.

Department of Justice, Office of Justice Programs Fiscal Year 2022 President's Budget Rollout. Principle speaker, remarks here. 2021.

National Institute of Justice webinar, Desistence from Crime: Implications for Research, Policy, and Practice. Opening remarks. Virtual, remarks here. November 29, 2021.

2021 Joint Training Conference for VOCA Victim Assistance and Victim Compensation Administrators, welcoming remarks. Virtual, remarks here. September 20, 2021.

Testimony for the Corrections and Reentry Task Force. November 19, 2020. (Presentation provided).

Smart on Crime Innovations Conference, speaker on "Transforming Probation and Parole." New York, NY, 2019. Remarks not available. Program description available here.

Facilitated livestream event, "Transforming Prisons: A Conversation from Inside the DC Department of Corrections." Washington, DC, May 15, 2019.

White House Prison Reform Summit, panelist, "What Do Data-Driven Results Actually Look Like?" Washington, DC, May 18, 2018. Notes or transcript not available. Representative press reporting available here.

NADCL Presidential Summit & Annual State Criminal Justice Network Conference, panelist, "This Side of the Law: Reentered, Reformed, and Reinvented." Atlanta, GA, August 23-25, 2018.

Smart on Crime Innovations Conference, plenary speaker, "Reforming Probation and Parole to Promote Success." New York, NY, 2018.

Executive Alliance for Boys and Men of Color. February 21, 2017. (Remarks provided).

NYU Roundtable on the Role of the Prosecutor in Facilitating Reentry and Reducing Reentry, opening speaker. New York, NY, December 2, 2016. No transcript or program information available.

Florida TaxWatch Conference, speaker on "Restoration of Voting Rights for Those with a Felony Record." Orlando, FL, November 17, 2016. No transcript or program information available.

HHS Research and Evaluation Conference on Self Sufficiency, "The Administration's Efforts to Serve Reentering Fathers," plenary speaker. Washington, DC, June 1, 2016. (Copy provided).

Georgetown Law School Alternative Sentencing Key Stakeholder Summit, speaker on collateral consequences. Washington, DC, March 8, 2016. No transcript or program information available.

Statewide Recidivism Reduction Forum, speaker on collateral consequences and opportunities for state action. Washington, DC, March 8, 2016. No transcript or program information available.

National Second Chance Conference, speaker on the Reentry Council and Barriers to Employment. Washington, DC, December 17, 2015. (Presentation provided).

Center for American Progress event, speaker on "The Impact of Criminal Records on Children and Families." Washington, DC, December 10, 2015. Notes or transcript not available. Program summary here.

Congressional Black Caucus Annual Legislative Conference, speaker on "Education Behind the Wall: Breaking the Cycle of Incarceration." Washington, DC, September 18, 2015. Transcript or program information not available.

Department of Justice and National Science Foundation Workshop on Civil Legal Aid Research, speaker on "Civil Legal Aid as a Necessary Service for the Reentry Population." Washington, DC, May 20, 2015. Program summary here.

Southern Summit on Fair Hiring, "Public Safety and Accountability through Community Understanding: Employment as a Critical Element of Changing Lives and Strengthening Communities," opening speaker. Atlanta, GA, May 18, 2015. Transcript or program information not available.

Bipartisan Summit on Criminal Justice Reform, speaker on "Innovative Models: Reentry and Restoring Rights to the Formerly Incarcerated." Washington, DC, March

26, 2015. Video of remarks here.

Congressional Black Caucus Foundation, policy briefing, "Positive Change that Sustains: A Conversation Promoting Successful Reentry, Criminal Justice Reform, and Comprehensive Programs and Policy Solutions." Washington, DC, March 18, 2015. Transcript or program information not available.

International Community Corrections Association Policy Forum, speaker on the Federal Interagency Reentry Council. Washington, DC, March 3, 2015. Transcript or program information not available.

American Bar Association, "First National Summit on Collateral Consequences." Washington, D.C. February 27, 2015 (remarks provided).

McArthur Foundation, "Safety and Justice Challenge." Washington, DC, February 11, 2015. (Copy provided).

Senate Addiction Forum, "Understanding the Science and Addressing Collateral Consequences," plenary presentation. Washington, DC, December 2, 2014.

Justice Reinvestment Summit, speaker on the Department of Justice role in sustaining success for justice reinvestment. San Diego, CA, November 17, 2014. Transcript or program information not available.

SAMHSA conference, "Bridging the Gap: Improving the Health of Justice-Involved Individuals through Information Technology," keynote address. Rockville, MD, September 17, 2014. (Copy provided).

Smart on Crime conference, policy presentation for federal practitioners. Washington, DC, June 16, 2014. Transcript or program information not available.

National Second Chance Act Conference, plenary presentation on the Federal Interagency Reentry Council. National Harbor, MD, May 14, 2014. Transcript or program information not available.

Michigan Reentry Summit, keynote address. Lansing, MI, May 6, 2014. (Copy provided.)

White House Office of Science and Technology Policy workshop on Technology as a Tool for Reentry, opening remarks, Washington, DC, April 22, 2014. Transcript or program information not available.

National African American Drug Policy Coalition 10th Anniversary Celebration Summit Conference, presentation on Achieving Solutions to the Substance Abuse, Mental Health, Violence and Crime Problems in the US. Washington, DC, April 8, 2014. Transcript or program information not available.

Association for Public Policy Analysis and Management (APPAM) conference, presenter on incarceration, reentry, and justice reinvestment issues. Washington, DC, November 8, 2013. Transcript or program information not available.

"Health Behind Bars: The Impact of the Affordable Care Act on the U.S. Justice System," keynote speaker at symposium for journalists. New York, NY, October 21, 2013. Transcript or program information not available.

Leadership Conference on Civil and Human Rights, presenter, "Isolated from Society: Reentry after Incarceration." Washington, DC, July 25, 2013. Transcript or program information not available.

Welfare Research and Evaluation Conference, sponsored by HHS Administration for Children and Families, presentation on Incarceration and Poverty: Supporting Improved Well-Being for Ex-Offenders and their Families. Washington, DC, May 29, 2013. Transcript or program information not available.

Education for All: Improving Educational Access in Correctional Facilities and Beyond, sponsored by the U.S Department of Education and the Ford Foundation. Presentation, "Federal Collaboration on Prisoner Reentry." Washington, DC, April 29, 2013. Transcript or program information not available.

National Association of Counties 2013 Legislative Conference, presentation, "The Obama Administration's Efforts to Improve Reentry and Decrease Recidivism." Washington, DC, March 3, 2013. (Copy provided).

National Association of Criminal Defense Lawyers, Task Force on Restoration of Rights and Status after Conviction Hearing. February 21, 2013. (Copy provided).

State Leaders' National Forum on Reentry and Recidivism, presenter, "How Can the Federal Government Help States Reduce Recidivism." Washington, DC, December 8, 2012. Transcript or program information not available.

Forum on Benefits and Challenges of Hiring an Individual with a Criminal Record, hosted by the Job Opportunities Task Force, featured speaker. Rockville, MD, September 20, 2012. Program description available here.

Michigan Reentry Summit, featured speaker. Detroit, MI, September 19, 2012. Transcript or program information not available.

5th Citizen Security Intensive Training Clinic, hosted by the Inter-American Development Bank, presenter on lessons in violence prevention and police reform initiatives. Washington, DC, September 12, 2012. Transcript or program information not available.

Capitol Hill Briefing on Fatherhood: Empower Fathers to Build Lives of Dignity and Economic Self-Sufficiency, presenter on Federal Interagency Reentry Council efforts to

reduce barriers to employment. Washington, DC, June 7, 2012. Transcript or program information not available.

Fedcap Forum on Breaking Barriers to Economic Independence - What Every Employer Should Know about Hiring People with Conviction Histories, presenter. New York, NY, May 31, 2012. Transcript or program information not available.

National Second Chance Act Conference, plenary presentation on the Federal Interagency Reentry Council. Washington, DC, May 22, 2012. Transcript or program information not available.

Annual Meeting of the State Adult Education Directors, presenter, "Administration Accomplishments: Keeping Adult Education at the Core." Washington, DC, April 3, 2012. Transcript or program information not available.

Maryland's first Annual Statewide Community Reentry Symposium, plenary address. Annapolis, MD, February 28, 2012. (Copy provided).

Justice and Public Safety Steering Committee Symposium for the National Association of County Officials (NACo), luncheon address on the Reentry Council and implications for local governments. Atlanta, GA, January 26, 2012. (Copy provided.)

Healthy Marriage and Promoting Responsible Fatherhood Conference, hosted by HHS Administration for Children and Families, plenary speaker. Washington, DC, December 13, 2011. Transcript or program information not available.

Rhode Island Prisoner Reentry Summit, keynote address. Providence, RI, November 29, 2011. Transcript or program information not available.

Congressional Staff Briefing on The Second Chance Act: Reducing Corrections Costs and Recidivism, speaker. Washington, DC. November 4, 2011. Transcript or program information not available.

"Education from Inside Out" Forum, presenter on Reentry Council and the Second Chance Act. Washington, DC, October 3, 2011. Transcript or program information not available.

Congressional Black Caucus Foundation's 41st Annual Legislative Conference, presenter on Collateral Consequences: The Economic Cost of Incarceration on African-American Families and Communities. Washington, DC, September 24, 2011. Transcript or program information not available.

Pennsylvania Reentry Summit: Exploring and Examining Innovative Reentry Strategies for the 21st Century, presenter on federal reentry efforts. Harrisburg, PA, September 13, 2011. Transcript or program information not available.

National Organization of Black Law Enforcement (NOBLE) Conference, presentation on Reentry: The Challenges for Law Enforcement and the Community. St. Louis, MO,

April 20, 2011. Transcript or program information not available.

National Law Employment Project Conference, presentation, "Taking on the Challenges Facing Workers with Criminal Records." Washington, DC, April 5, 2011. Transcript or program information not available.

Congressional Black Caucus Foundation, presentation, "Investing in Communities of Color Forum: A Focus on Prisoner Reentry." Washington, DC, February 28, 2011. (Copy provided).

BJA National Conference, presentation, "Putting Evidence to Work to Fight Violent Crime." Washington, DC, December 6, 2010. Transcript or program information not available.

US Attorney's Conference, presentation, "The Attorney General's Anti-Violence Strategy: A Focus on Reentry." Washington, DC, November 16, 2010. Transcript or program information not available.

National Forum on Youth Violence Prevention Conference, presentation, "Integrating Evidence and Experience into Comprehensive Plans: A Focus on Reentry." Washington DC, October 5, 2010. Transcript or program information not available.

Forum on Reducing Drug Abuse, Crime, and Incarceration: Innovations in Community Supervision and the Future of Drug Courts, sponsored by the Washington Office of Latin America, presentation. Washington DC, March 25, 2010. Transcript or program information not available.

American Bar Association Second Annual Sentencing Advocacy, Practice and Reform Institute, presentation, "Prisoner Reentry: What Do We Know about 'What Works'." Washington, DC, November 6, 2009. Transcript or program information not available.

Eastern Sociological Society Conference, presentation, "What Should the New Administration do about Crime?" Baltimore, MD. March 20, 2009. (Copy provided).

National Association of Counties (NACo) 2009 Legislative Conference, presentation, "Jail Reentry and the Role of Local Elected Officials." Washington, DC. March 7, 2009. Transcript or program information not available.

American Probation and Parole Association's Annual Training Institute, presentation, "The Transition from Jail to Community Project." Myrtle Beach, SC. February 9, 2009. Transcript or program information not available.

Community Corrections Research Network, luncheon presentation, "Innovative and Evidence-Based Parole Supervision Strategies." Washington, DC, November 18, 2008. Transcript or program information not available.

American Bar Association Criminal Justice Section Conference: *Sentencing Crossroad: Directions and Consequences,* presentation, "Prisoner Reentry: Taking Stock and

Moving Forward." Washington, DC, October 24, 2008. Transcript or program information not available.

United States Sentencing Commission Symposium on Alternatives to Incarceration, presentation, "Prisoner Reentry: Taking Stock and Moving Forward." Washington, DC, July 15, 2008. (Copy provided).

National Association of County Officials Annual Conference, presentation, "Reentry from Jail: Why Should We Care and What Can We Do?" Kansas City, Kansas, July 14. 2008. Reporting provided here.

Defendant/Offender Workforce Development Conference, presentation, "*Transition from Jail to Community* Project." Cleveland, Ohio, April 14, 2008. Transcript or program information not available.

American Probation and Parole Association's Annual Training Institute, presentation, "The Transition from Jail to Community Project." Phoenix, Arizona, February 12, 2008. Transcript or program information not available.

Massachusetts Executive Office of Public Safety and Security, presentation, "Reincarcerated: The Experiences of Men Returning to Massachusetts Prisons." Boston, Massachusetts, January 4, 2008. Transcript or program information not available.

American Jail Association training, presentation, "National Momentum on Jail Reentry." Montgomery County, Maryland, October 23, 2007. Transcript or program information not available.

National Governors Association's *Prisoner Reentry Policy Academy: Advancing the Strategic Vision*, "Measuring What Matters: Performance Measurement in the Reentry Context," Washington, D.C., August 6, 2007. Transcript or program information not available.

American Probation and Parole Association's 32nd Annual Training Institute, presentation, "The Challenges and Opportunities of Reentry from Local Jails," Philadelphia, PA, July 10, 2007. Transcript or program information not available.

National Governors Association Reentry Policy Academy, presentation "Prisoner Reentry: What Have We Learned So Far?" Presented at in-state policy workshops in St. Paul, MN; Indianapolis, IN; and Harrisburg, PA, December 2006 - February 2007. Transcript or program information not available.

Community Capacity Development Office at the Department of Justice, presentation, "Highlights from the Weed and Seed Reentry Readiness Assessment." Washington, DC, February 7, 2007. Transcript or program information not available.

North Carolina Reentry Summit, luncheon presentation, "Prisoner Reentry: Taking Stock and Moving Forward." Winston-Salem, NC, November 29, 2006. Transcript or program information not available.

The Open Society Institute's After Prison Initiative Retreat, presentation, "The Serious and Violent Offender Reentry Initiative: What's Been Accomplished?" Santa Ana Pueblo, NM, November 14, 2006. Transcript or program information not available.

National Institute of Drug Abuse forum, opening presentation, "Parents in the Criminal Justice System and its Impact on Children and Families." Washington, DC, November 6, 2006. Transcript or program information not available.

International Community Corrections Association conference, presentation, "The Challenges of Prisoner Reentry: Findings from UI's *Returning Home* Study." Norfolk, VA, October 9, 2006. Transcript or program information not available.

John Glenn Leadership Center at Ohio State University, inaugural seminar for the Institute for Excellence in Justice, "Does Post Prison Supervision Affect Recidivism?" Columbus, OH, June 2, 2006. Transcript or program information not available.

National Governors Association Executive Policy Forum on Prisoner Reentry, opening presentation, "Prisoner Reentry: What We Know About 'What Works'." Orlando, Florida, March 6, 2006. (Copy provided).

American Probation and Parole Association conference, presentation, "Does Parole Work? Research Findings and Policy Opportunities." Austin, Texas, January 10, 2006. Transcript or program information not available.

Community Corrections Research Network, luncheon speaker, "Does Parole Work? Analyzing the Impact of Post-Prison Supervision on Rearrest Rates." Washington, DC, October 24, 2005. Accompanying report provided here.

John Jay College of Criminal Justice's *Occasional Series on Reentry Research*, featured presenter, "Does Parole Work? Research Findings and Policy Opportunities." New York, New York, October 21, 2005. Notes provided here.

Norfolk Reentry Summit, keynote address, "Prisoner Reentry: National Trends and Challenges." Norfolk, VA, June 22, 2005. Transcript or program information not available.

National Leadership Roundtable on Reentry and Community Corrections (sponsored by the International Community Corrections Association and Senator Brownback), opening presentation, "Prisoner Reentry: A National Overview." Washington, DC, April 18, 2005. Transcript or program information not available.

Philadelphia/Frankford Reentry Roundtable, presentation, "Overview of Reentry Issues: A National Perspective." Philadelphia, PA, March 15, 2005. Transcript or program information not available.

American Enterprise Institute, panel presentation responding to new book, "Rethinking Rehabilitation: Why Can't We Reform Our Criminals," by David Farabee. Washington,

DC, March 4, 2005. Transcript or program information not available.

National Governors Association Reentry State Policy Academy, plenary presentation, "Prisoner Reentry: A Cross-State Summary." Boston, MA, May 6, 2004. Transcript or program information not available.

National Governors Association Reentry State Policy Academy, plenary presentation "Prisoner Reentry: National Trends and Challenges" delivered in Atlanta, GA; Lansing, MI; and to a group in Boise, Idaho, September - November 2003. Transcript or program information not available.

Reentry Policy Council Workforce Development and Training Advisory Group Meeting, presentation, "The State of Research on Reentry and Employment." Dallas, TX, January 17, 2003. Transcript or program information not available.

National Governors Association planning meeting for the Reentry State Policy Academy, plenary presentation, "The National Landscape of Prisoner Reentry." Washington, DC, November 13, 2002. Transcript or program information not available.

National Association of Counties Public Safety Steering Committee, keynote presentation, "Prisoner Reentry: A National Snapshot." Branson, MO, January 24, 2002. Transcript or program information not available.

Safe Cities Partners (from the Departments of Justice, Treasury, HUD, and HHS), presentation "Prisoner Reentry: A National Overview." Washington, DC, June 27, 2002. Transcript or program information not available.

John F. Kennedy School of Government, presentation, "A National Overview of Prisoner Reentry." Cambridge, MA, November 20, 2001. Transcript or program information not available.

National Crime Prevention Council's "Embedding Prevention" conference, plenary presentation, "Prisoner Reentry: A National Overview." Washington, DC, October 29, 2001. Transcript or program information not available.

National Governors Association Policy Directors' Retreat, plenary presentation, "Prisoner Reentry: A National Overview." Kiawah Island, SC, October 1, 2001. Transcript or program information not available.

Jail Reentry Roundtable, sponsored by the National GAINS Center and SAMSHA, keynote presentation, "Prisoner Reentry from Jails: A National Overview." Washington, DC, September 6, 2001. Transcript or program information not available.

International Community Corrections Conference on "Prisoner Reentry and Reintegration to the Family," presentation, "Reentry and Mentoring." Philadelphia, PA,

September 24, 2001. Transcript or program information not available.

American Probation and Parole Association conference, presentation, "National Trends in Prisoner Reentry." Philadelphia, PA, August 28, 2001. Transcript or program information not available.

National League of Cities, plenary presentation "Prisoner Reentry: A National Overview." Albuquerque, NM, May 18, 2001. Transcript or program information not available.

Academy of Criminal Justice Sciences, panel presentation, "The Social Policy Dimensions of Prisoner Reentry: Exploring the Challenges of Substance Abuse, Health, Employment and Housing." Washington, DC, April 5, 2001. Transcript or program information not available.

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. Responsive articles that I have been able to find are listed in Attachment A.

f. If applicable, list all published judicial opinions that you have written, including concurrences and dissents. Supply the citations for all published judicial opinions to the Committee.

Not applicable.

13. **Public Office, Political Activities and Affiliations:**

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not run for public office.

I have held the following appointed positions at the United States Department of Justice:

Senior Advisor to the Assistant Attorney General, 2010-2015. This was a Schedule C appointment, and is also listed in my employment history above.

Director of Policy, Office of Justice Programs, 2015-2017. This was a non-career SES appointment, and is also listed in my employment history above.

Executive Director, Federal Interagency Reentry Council, 2016-2017. I was appointed by (then) co-chairs Attorney General Loretta Lynch and White House Domestic Policy Council Director Cecilia Muñoz.

Principal Deputy Assistant Attorney General, 2021-present. This is a non-career SES appointment, and is also listed in my employment history above.

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.

N/A

14. **Legal Career:** Answer each part separately.

This section is not applicable because I am not a lawyer.

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;

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

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.

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.

v. Whether you have held any judicial office, including positions as an administrative law judge, on any U.S. federal, state, tribal, or local court and if so, please provide the name of the court, the jurisdiction of that court, whether the position was appointed or elected, and the dates of your service.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

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

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:

1. federal courts:
2. state courts of record:
3. other courts:
4. administrative agencies:

ii. Indicate the percentage of your practice in:

1.civil proceedings:
2.criminal proceedings:

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

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

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

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:

This section is not applicable because I am not a lawyer.

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.

References:

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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.)

N/A. I have not addressed many of the questions in this section because I am not a lawyer.

That said, I have spent my entire career - more than 30 years - in government, philanthropy, and nonprofit organizations focused on community safety and improving the criminal justice system. My first internship with the criminal justice system was at the end of high school, and all through college I volunteered with justice-involved juveniles in probation, halfway house and school settings. My first job out of college was as a VISTA Volunteer at the Vermont Department of Corrections, developing reentry programs for people leaving prison.

I then spent two years managing a community service program for court-involved youth before going back to graduate school. At the Harvard Kennedy School of Government, I had an opportunity to work with David Kennedy and others at the very outset of the Boston Gun Project, which evolved into Operation Ceasefire (also referred to as focused deterrence/pulling levers) which has been widely influential as an effective, evidence-based strategy. I also engaged with the Lowell Police Department, focused on analysis and strategies to reduce assaults and violence.

After receiving my MPP, I worked at the National Institute of Justice (NIJ) as a Presidential Management Intern, developing community crime-reduction and reentry initiatives. I helped shape and manage the country's first national prisoner reentry efforts, the Strategic Approaches to Community Safety Initiative (SACSI), Community Mapping, Planning and Analysis for Safety Strategies Initiative (COMPASS), and the Crime Policy for the 21st Century Initiative. After three years, I left with then-NIJ Director Jeremy Travis to join the Urban Institute, where I spent 10 years directing projects focused on prisoner reentry and public safety. Through foundational Reentry Roundtables and seminal reports, I was part of the small team to define and establish reentry as a national concern, paving the way for federal reentry initiatives in the executive branch and the Second Chance Act of 2007.

I then spent seven years in the Obama-Biden Administration, serving as director of policy and senior advisor at the Office of Justice Programs (OJP), focused on

criminal justice reform, urban policy, and building trust between the justice system and communities of color. I concurrently served as executive director of the Federal Interagency Reentry Council, a cabinet-level body responsible for spearheading the federal Ban the Box rule (since codified by Congress as the Fair Chance to Compete for Jobs Act), fair housing guidance, the Second Chance Pell initiative, and Medicaid guidance for the justice-involved population.

Before returning to the Department of Justice (DOJ) in 2021, I spent almost four years as Vice President of Criminal Justice at Arnold Ventures, where I launched portfolios on corrections reform and expanding economic opportunity for justice-impacted populations. And in May 2021, I was appointed Principal Deputy Assistant Attorney General for OJP, DOJ's principal funding, research and statistical component, overseeing about $5 billion annually in grants and other resources to support state, local and tribal criminal and juvenile justice activities and victim service programs. In my year plus at OJP, I have focused on being a good steward of federal dollars; raising morale and bolstering the dedicated career staff; leveraging our resources to best help jurisdictions keep their communities safe; and investing in science to inform practice and policy.

In sum, I have spent my career helping shape innovative approaches to criminal justice challenges in nonpartisan, bi-partisan, and evidence-based ways. I have strong ties and a history of collaboration with policymakers – on both sides of the aisle – as well as practitioners, funders, nonprofit leaders, and the advocacy community.

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 on the topic of prisoner reentry, and have done so at George Mason University (2014-2020), the University of Maryland (2013), and George Washington University (2004). I do not have prepared syllabi or notes for these lectures, other than the following two simulated Task Force hearings:

Federal Interagency Reentry Council, Task Force Hearing at George Mason University. "Corrections and Prisoner Reentry." April 21, 2015. (Copy provided).

Federal Interagency Reentry Council, Task Force Hearing at GMU (simulated). "Corrections and Prisoner Reentry." March 4, 2014. (Copy provided).

Federal Interagency Reentry Council, Task Force Hearing at George Mason University (simulated). "Prisoner Reentry." Prepared for Crime and Public Policy, UMD. November 14, 2013. (Copy provided).

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

I have no arrangements in the future to be compensated for any financial or business interest.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

None.

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

Please see my SF-278 as provided by the Office of Government Ethics.

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

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

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

I am not aware of any conflicts of interest. During the nomination process, I consulted with the Department of Justice's ethics office and Designated Ethics Officer to identify any potential conflicts. If I am confirmed, I will continue to consult with that office and will recuse myself from any matter in which recusal is required.

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

If I am confirmed, any potential conflict of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Department's designated agency ethics official. If confirmed, I will continue to consult with the Department of Justice's ethics office and will recuse myself from any matter in which recusal is required.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional work load, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

The majority of my time has been devoted to non-profit and government sector work and raising my family. I have volunteered my time on an occasional basis via workplace service opportunities or with my kids' schools or temple, but I do not have other volunteer work to report.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Jonathan James Canada Grey
Judicial Nominee to the U.S. District Court for the Eastern District of Michigan

1. **Under what circumstances can federal judges add to the list of fundamental rights the Constitution protects?**

   Response: To determine whether an unenumerated right receives constitutional protection, the Supreme Court considered whether the right is "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotation marks omitted). If I were confirmed as a district judge, I would faithfully apply Supreme Court and Sixth Circuit precedent, carefully consider legal arguments, and apply the law to the facts.

2. **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: Judgments issued by judges must be based upon application of precedent to specific facts. As a magistrate judge, I approach each case with an open mind, consider parties' arguments, apply relevant Supreme Court and Sixth Circuit precedent, consider persuasive legal authority in the absence of precedent, weigh relevant facts, and reach a conclusion applying the law to the facts being mindful at all times of a judge's oath to "administer justice without respect to persons."

3. **Please define the term "living constitution."**

   Response: According to Black's Law Dictionary, a "living constitution" is a "constitution whose interpretation and application can vary over time according to changing circumstances and changing social values." (11th ed. 2019).

4. **Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

   Response: I believe the Constitution is an enduring document. I am not familiar with then-Judge Brown Jackson's statement or context surrounding it.

5. **Do parents have a constitutional right to direct the education of their children?**

Response: Yes. In *Meyer v. Nebraska*, the Supreme Court held that pursuant to the Fourteenth Amendment's Due Process clause, parents have a Constitutional right to direct the education of their children. 262 U.S. 390, 400 (1923).

6. **Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.**

Response: The appropriate allocation of funds to police departments is a matter for policymakers. As a magistrate judge and judicial nominee, I am unable to express an opinion on the appropriate allocation of funds to police departments.

7. **Are law enforcement partnerships key to preventing acts of terror?**

Response: The appropriate steps to prevent acts of terror are generally a matter for other actors besides judges. In my prior practice as an Assistant United States Attorney for over nine years, I advocated for, and developed, strong relationships with numerous law enforcement agencies in an effort to prevent a broad range of criminal activity and to support community safety.

8. **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: As a magistrate judge, I approach each case with an open mind, consider parties' arguments, apply relevant Supreme Court and Sixth Circuit precedent, consider persuasive legal authority in the absence of precedent, weigh relevant facts, and reach a conclusion applying the law to the facts being mindful at all times of a judge's oath to "administer justice without respect to persons." In bond determinations, I consider the facts and applicable law, including the Bail Reform Act passed by Congress, which requires me to impose "the least restrictive further condition or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.SC. § 3142(c)(1)(B). If confirmed as a district judge, I would follow this same approach and at sentencing, consider the 18 U.S.C. § 3553(a) factors which would explicitly require that I "protect the public from further crimes of the defendant." 18 U.S.C. § 3553(a)(2)(C).

9. **Is the right to petition the government a constitutionally protected right?**

Response: Yes. The right to petition the government is protected in the First Amendment.

10. **What role should empathy play in sentencing defendants?**

Response: Empathy is not a sentencing factor for a judge to consider. As a magistrate judge, sentencing is governed by the law and the facts, and I consider the 18 U.S.C. 3553(a) factors prior to pronouncing a sentence. I also apply any Supreme Court and Sixth Circuit precedent. If I were confirmed as a district judge, I would follow this same approach.

11. Do you agree with the following statement: "Not everyone deserves a lawyer, there is no civil requirement for legal defense"?

Response: The Constitution does not provide a right to an attorney in civil cases. In exceptional civil cases, an attorney may be appointed by the court. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 25-27 (1981).

12. Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:

a. Was *Brown v. Board of Education* correctly decided?

Response: As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. However, the issues litigated in *Brown v. Board of Education* are unlikely to be litigated in the future. I view this case as an exception to the general rule preventing me from offering an opinion on Supreme Court decisions. The Court correctly decided the case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

b. Was *Loving v. Virginia* correctly decided?

Response: As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. However, the issues litigated in *Loving v. Virginia* are unlikely to be litigated in the future. I view this case as an exception to the general rule preventing me from offering an opinion on Supreme Court decisions. The Court correctly decided the case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

c. Was *Roe v. Wade* correctly decided?

Response: In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overruled *Roe v. Wade*. As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent

and would continue to do so if confirmed as a district judge. I will follow and apply *Dobbs v. Jackson Women's Health Organization* as it is Supreme Court precedence.

d. Was *Planned Parenthood v. Casey* correctly decided?

Response: In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overruled *Planned Parenthood v. Casey*. As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge. I will follow and apply *Dobbs v. Jackson Women's Health Organization* as it is Supreme Court precedence.

e. Was *Griswold v. Connecticut* correctly decided?

Response: The decision of the Supreme Court in *Griswold v. Connecticut is* binding precedent. As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

f. Was *Gonzales v. Carhart* correctly decided?

Response: The decision of the Supreme Court in *Gonzales v. Carhart is* binding precedent. As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

g. Was *McDonald v. City of Chicago* correctly decided?

Response: The decision of the Supreme Court in *McDonald v. City of Chicago is* binding precedent. As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

h. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?

Response: The decisions of the Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC are* binding precedent. As a magistrate judge

and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

i. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?

Response: The decision of the Supreme Court in *New York State Rifle & Pistol Association v. Bruen* is binding precedent. As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

j. Was *Dobbs v. Jackson Women's Health* correctly decided?

Response: The decision of the Supreme Court in *Dobbs v. Jackson Women's Health Organization* is binding precedent. As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

13. Is threatening Supreme Court justices right or wrong?

Response: A threat to a Supreme Court Justice may be a crime. For example, under 18 U.S.C. § 875, it is a crime to transmit in interstate commerce a threat to injure a person.

14. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.

Response: Under 18 U.S.C. 1507, it is a misdemeanor offense if any individual "with the the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence."

15. Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?

Response: Upon research and belief, no Supreme Court or Sixth Circuit precedent has held that 18 U.S.C. 1507 is unconstitutional. In *Cox v. Louisiana*, the Supreme Court

analyzed a Louisiana statute implemented months before 18 U.S.C. § 1507 and modeled on the draft of § 1507. 85 S.Ct. 476, 479 (1965). The Supreme Court found the Louisiana statute constitutional. *Id.* at 481. If confronted with a case analyzing the constitutionality of 18 U.S.C. § 1507, I would apply Supreme Court and Sixth Circuit precedent, consider the arguments of the parties, and analyze the facts to reach a just conclusion.

16. What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?

Response: In *Chaplinsky v. United States*, the Supreme Court held that the government may regulate "fighting words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." 315 U.S. 568, 571-72 (internal quotation marks omitted) (1972). The Supreme Court held that such regulation is permitted by the First Amendment. Id. at 572.

17. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?

Response: In *Virginia v. Black*, the Supreme Court held that 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." 538 U.S. 343, 359 (2003). "The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur." *Id.* at 359-60 (internal quotation marks omitted).

18. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.

Response: As a magistrate judge, I approach each case with an open mind, consider parties' arguments, apply relevant Supreme Court and Sixth Circuit precedent, consider persuasive legal authority in the absence of precedent, weigh relevant facts, and reach a conclusion applying the law to the facts being mindful at all times of a judge's oath to "administer justice without respect to persons." I treat all parties with respect and endeavor to ensure that all parties feel heard. If confirmed as a district judge, I would follow this same approach. I greatly respect all Supreme Court Justices and their decisions. I have not studied every Supreme Court Justice's jurisprudence in exacting detail. As a sitting magistrate judge I follow controlling Supreme Court precedent and if confirmed as a district judge I would continue to do so.

19. Please identify a Sixth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.

Response: As a magistrate judge, I approach each case with an open mind, consider parties' arguments, apply relevant Supreme Court and Sixth Circuit precedent, consider persuasive legal authority in the absence of precedent, weigh relevant facts, and reach a conclusion applying the law to the facts being mindful at all times of a judge's oath to "administer justice without respect to persons." I treat all parties with respect and endeavor to ensure that all parties feel heard. If confirmed as a district judge, I would follow this same approach. I greatly respect all Sixth Circuit judges and their decisions. I have not studied every Sixth Circuit judicial opinion in exacting detail. As a sitting magistrate judge I follow controlling Supreme Court and Sixth Circuit precedent and if confirmed as a district judge I would continue to do so.

20. Under Supreme Court and Sixth Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?

Response: The Supreme Court has used the term "basic or historical fact" and defined it as "addressing questions of who did what, when or where, how or why." *U.S. Bank Nat. Ass'n v. Vill. at Lakeridge, LLC*, 138 S.Ct. 960, 966 (2018). In *Pullman-Standard v. Swint*, the Supreme Court noted the "vexing nature of the distinction between questions of fact and questions of law." 456 U.S. 273, 288 (1982). In *Singh v. Rosen*, the Sixth Circuit addressed the distinction and noted that appellate courts generally review legal determinations for clear error and factual determinations de novo. 984 F.3d 1142, 1148 (6th Cir. 2021) (citing *U.S. Bank Nat. Ass'n v. Vill. at Lakeridge, LLC*, 138 S.Ct. 960, 965-66 (2018)). Further, the Supreme Court and the Sixth Circuit have held that a case-by-case approach ensues to determine the applicable appellate standard if there is a mixed question of law and fact. *Guerrera-Lasprilla v. Barr*, 140 S.Ct. 1062, 1068-69 (2020); *Singh v. Rosen*, 984 F.3d 1142, 1148 (6th Cir. 2021). "If a question is more fact intensive, they typically review the question with deference; if it is more legal, they typically review it de novo." *Singh v. Rosen*, 984 F.3d 1142, 1148 (6th Cir. 2021). If confirmed, generally I would not have the opportunity to apply these appellate standards of review on the district court, but I would faithfully apply Supreme Court and Sixth Circuit precedence on all legal issues.

21. When you are considering a case, do you have a process for ensuring that you correctly understand how the law should apply, without letting personal preferences shape your view? If so, what is your process or approach?

Response: Personal views play no role in my approach. As a magistrate judge, I approach each case with an open mind, consider parties' arguments, apply relevant Supreme Court and Sixth Circuit precedent, consider persuasive legal authority in the absence of precedent, weigh relevant facts, and reach a conclusion applying the law to the facts. If confirmed as a district judge, I would follow this same approach.

22. During your selection process, did you talk with anyone from or anyone directly associated with the Raben Group or the Committee for a Fair Judiciary? If so, what was the nature of those discussions?

Response: No.

23. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

24. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

25. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? 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, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

26. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

27. 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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?

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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?

Response: No.

28. 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.

29. 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.

30. **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 Foundations 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.

31. **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.

32. The Raben Group is "a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors." It manages the Committee for a Fair Judiciary.

a. Has anyone associated with The Raben Group or the Committee for a Fair Judiciary 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 Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?

Response: No.

c. Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?

Response: No.

33. 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: On March 8, 2022, I applied to be a district judge in the United States District Court for the Eastern District of Michigan. On April 13, 2022, I interviewed with members of the judicial selection committee established by Senator Debbie Stabenow and Senator Gary Peters. On May 26, 2022, officials from the White House Counsel's Office invited me to interview and informed me that Senators Stabenow and Peters had recommended me for potential nomination and. On May 31, 2022, I interviewed with officials from the White House Counsel's Office. Since June 11, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2022, my nomination was submitted to the Senate.

34. Please explain, with particularity, the process whereby you answered these questions.

Response: On the afternoon of December 7, 2022, the Office of Legal Policy sent these questions to me. I reviewed the questions, conducted research, and drafted answers based on my research and recollections. I sent a draft of my answers to the Office of Legal Policy who provided feedback. After I considered this feedback, I submitted my answers to these questions.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Jonathan Grey, nominated to be United States District Judge 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. Is racial discrimination wrong?

Response: Yes. Congress has explicitly passed laws prohibiting race discrimination. For example, in in the employment context in the Civil Rights Act of 1964 and in the housing context in the Fair Housing Act, race discrimination is outlawed. Further, any legal claims challenging governmental action and discrimination based on race are subject to strict scrutiny.

2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

Response: To determine whether an unenumerated right receives Constitutional protection, the Supreme Court considered whether the right is "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotation marks omitted). As a sitting magistrate judge and a judicial nominee, it is not appropriate for me to provide an opinion on this topic. If I were confirmed as a district judge, I would faithfully apply Supreme Court and Sixth Circuit precedent, carefully consider legal arguments, and apply the law to the facts.

3. How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: As a magistrate judge, I approach each case with an open mind, consider parties' arguments, apply relevant Supreme Court and Sixth Circuit precedent, consider persuasive legal authority in the absence of precedent, weigh relevant facts, and reach a conclusion applying the law to the facts being mindful at all times of a judge's oath to "administer justice without respect to persons." I treat all parties with respect and endeavor to ensure that all parties feel heard. If confirmed as a district judge, I would follow this same approach. I greatly respect all Supreme Court Justices and their decisions. I have not studied every Supreme Court Justice's jurisprudence in exacting detail. As a sitting magistrate judge I follow controlling Supreme Court precedent and if confirmed as a district judge I would continue to do so.

4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an 'originalist'?

Response: According to Black's Law Dictionary, originalism is a "theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and adopted it." (7th ed. 1999). As a magistrate judge, I approach each case with an open mind, consider parties' arguments, apply relevant Supreme Court and Sixth Circuit precedent, consider persuasive legal authority in the absence of precedent, weigh relevant facts, and reach a conclusion applying the law to the facts being mindful at all times of a judge's oath to "administer justice without respect to persons." I treat all parties with respect and endeavor to ensure that all parties feel heard. If confirmed as a district judge, I would follow this same approach.

5. Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?

Response: According to Black's Law Dictionary, "living constitutionalism" is a "doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." (11th ed. 2019). As a magistrate judge, I approach each case with an open mind, consider parties' arguments, apply relevant Supreme Court and Sixth Circuit precedent, consider persuasive legal authority in the absence of precedent, weigh relevant facts, and reach a conclusion applying the law to the facts being mindful at all times of a judge's oath to "administer justice without respect to persons." I treat all parties with respect and endeavor to ensure that all parties feel heard. If confirmed as a district judge, I would follow this same approach.

6. If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?

Response: Where the text of a law is unambiguous, as a magistrate judge I am required to apply the plain meaning of the text. If confirmed, I would follow this same approach as a district judge.

7. Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?

Response: Principles of statutory interpretation are governed by Supreme Court and Sixth Circuit precedent.

8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: No.

9. Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?

Response: Yes. The decision of the Supreme Court in *Dobbs v. Jackson Women's Health Organization* is binding precedent.

a. Was it correctly decided?

Response: As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

10. Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?

Response: Yes. The decision of the Supreme Court in *New York Rifle & Pistol Association v. Bruen* is binding precedent.

a. Was it correctly decided?

Response: As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

11. Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?

Response: Yes. The Supreme Court's ruling in *Brown v. Board of Education* is binding precedent.

a. Was it correctly decided?

Response: As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. However, the issues litigated in *Brown v. Board of Education* are unlikely to be litigated in the future. I view this case as an exception to the general rule preventing me from offering an opinion on Supreme Court decisions. The Court correctly decided the case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

12. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?

Response: Under the Bail Reform Act passed by Congress, 18 U.S.C. §§ 3142(e)(2), (e)(3), and (f)(1) offenses which trigger a presumption in favor of pretrial detention include those involving narcotics where there is a maximum term of imprisonment of ten years or more; offenses where there is a maximum term of imprisonment of life or death; specific offenses involving minor victims; and specific offenses involving repeat offenders.

a. What are the policy rationales underlying such a presumption?

Response: The Bail Reform Act provides that the presumption applies to assure the defendant's appearance in court proceedings and the safety of any person or the community.

13. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?

Response: Yes. Under the Free Exercise Clause of the First Amendment to the Constitution, governmental laws or restrictions on private institutions that are not neutral or generally applicable are subject to strict scrutiny and may only be upheld if they are

"narrowly tailored" to "meet a compelling interest." *Tandon v. Newsom*, 141 S.Ct. 1294, 1297-98 (2021).

14. Is it ever permissible for the government to discriminate against religious organizations or religious people?

Response: Governmental action that burdens the free exercise of religion is subject to strict scrutiny if it is not facially neutral or generally applicable. *Tandon v. Newsom*, 141 S.Ct. 1294, 1297-98 (2021). Such action is subject to strict scrutiny and may only be upheld if it is "narrowly tailored" to "meet a compelling interest." *Id.* Burdens on the free exercise of religion may be further limited by the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act.

15. 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*, the Supreme Court granted preliminary injunctive relief to religious organizations who sued the governor of New York and alleged Constitutional violations. 141 S.Ct. 63 (2020). The religious organizations alleged that the state's COVID-19 pandemic capacity restrictions unlawfully violated their First Amendment right to free exercise of religion. *Id.* After finding that the state's restrictions were not "neutral and of general applicability," the Supreme Court applied strict scrutiny, and noted that the government could succeed if the regulations were "narrowly tailored" to meet a "compelling interest." *Id.* at 67. The Court found the pandemic constituted a compelling interest, but the capacity limits were unnecessarily restrictive and not "narrowly tailored." *Id.* The Court found the risk of irreparable harm existed given the religious traditions at stake. *Id.*

16. Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom.*

Response: In *Tandon v. Newsom*, the Supreme Court granted a preliminary injunction to plaintiffs who alleged that California's restrictions on the size of private gatherings violated their free exercise right to religious worship in their homes. 141 S.Ct. 1294, 1298 (2021). The Court found the restrictions were not neutral and the state could not satisfy strict scrutiny since it "treated some comparable secular activities more favorably than at-home religious exercise." *Id.* at 1296-97.

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

Response: Yes.

18. Explain your understanding of the U.S. Supreme Court's holding in

Masterpiece Cakeshop v. Colorado Civil Rights Commission.

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Supreme Court held that the Colorado Civil Rights Commission's cease and desist order to a baker who refused to bake a wedding cake for a same-sex couple violated the First Amendment's Free Exercise clause. 138 S.Ct. 1719 (2018). The Court found that the Commission exhibited "clear and impermissible hostility toward the sincerely held religious beliefs" of the bakery owner. *Id.* at 1729. This lack of neutrality violated the First Amendment. *Id.* at 1732.

19. Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?

Response: Yes. In *Hernandez v. Commissioner*, the Supreme Court stated that "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith or the validity of particular litigants' interpretations of those creeds." 109 S.Ct. 2136, 2148 (1989). Instead, sincerely held religious beliefs invoke protection under the First Amendment. *Frazee v. Ill. Dep't of Empl. Sec.*, 109 S.Ct. 1514, 1517-18 (1989).

a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?

Response: Sincerely held religious beliefs invoke protection under the First Amendment's Free Exercise clause even if the beliefs are outside the "commands of a particular religious organization." *Frazee v. Ill. Dep't of Empl. Sec.*, 109 S.Ct. 1514, 1517-18 (1989). Citing the Supreme Court, the Sixth Circuit has held that courts must determine whether the plaintiff's conduct reflects "an honest conviction" "consistent . . . with her . . . religious beliefs." *Fox v. Washington*, 949 F.3d 270, 277 (6th Cir. 2020) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014)).

b. Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?

Response: According to the Supreme Court, "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith or the validity of particular litigants' interpretations of those creeds." *Hernandez v. Commissioner*, 109 S.Ct. 2136, 2148 (1989). Thus, the courts do not wade into religious doctrinal disputes.

c. Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?

Response: As a sitting magistrate judge and nominee to become a district judge, I cannot comment on the official position of the Catholic Church. I have not studied the official position of the Catholic Church.

20. In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, the Supreme Court analyzed the ministerial exception grounded in the First Amendment religion clauses. 140 S.Ct. 2049 (2020). The Court determined whether the ministerial exception would thwart the employment discrimination claims of two Catholic school teachers. The Court rejected a "rigid formula" to determine whether the ministerial exception applied and examined the employees' duties instead of the employees' title. *Id.* at 2067. The Court held that the teachers bore responsibility "for instructing students in their faith" and they performed "vital religious duties," such that the ministerial exemption applied to bar the discrimination claims. *Id.* at 2066, 2069.

21. **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*, the Supreme Court held that the city's refusal to contract with Catholic Social Services to provide foster care violated the Free Exercise Clause of the First Amendment. 141 S.Ct. 1868 (2021). The Court found that the law was not neutral due to discretionary exceptions that could allow different treatment between secular and religious organizations. *Id.* at 1878-79. Thus, the Court applied strict scrutiny where the lower courts erred. *Id.* The Court found that the city failed to offer a compelling reason why exceptions were available to some entities, but not Catholic Social Services. *Id.* at 1882.

22. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Carson v. Makin*, the Supreme Court analyzed whether Maine's provision of tuition assistance benefits to only non-religious private schools violated citizens' Free Exercise rights. 142 S.Ct. 1987 (2022). The Court applied "the strictest scrutiny" since the law disqualified some private schools "solely because they are religious." *Id.* at 1996 (additional quotation marks omitted). Maine's disqualification of religious private schools solely due to religion violated Mainers' Free Exercise rights. *Id.*

23. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy v. Bremerton School District*, the Supreme Court held that a school district's suspension of a football coach for post-game, on-field prayers violated the coach's First Amendment Free Speech and Free Exercise rights. 142 S.Ct. 2407 (2022). The Court found the district's policy on the coach's prayers were "specifically directed at . . . religious practice"; and, therefore, the policy did not "qualify as neutral." *Id.* at 2422 (internal quotations omitted). The Court applied strict scrutiny and found that the school district failed to establish that its actions were narrowly tailored to achieve a compelling state interest and impermissibly burdened the Free Exercise of religion. *Id.* at 2426.

24. **Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v.***

Fillmore County.

Response: Justice Gorsuch wrote a concurrence to provide guidance to the state court on remand as the Supreme Court reversed the Minnesota courts' denial of relief to members of the Amish Community who sought an exception from a county's septic system regulations and installations on religious grounds. *Mast v. Fillmore County*, 141 S.Ct. 2430 (2021). Justice Gorsuch highlighted the application of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the application of strict scrutiny where the act is appropriately invoked. *Id.* Justice Gorsuch provided that the county and lower courts misapplied strict scrutiny. *Id.* at 2432. Justice Gorsuch wrote that while the county had a general interest in sanitation regulations, it must establish a "compelling" interest with "specific application" to the Amish community and offer a compelling explanation why it refused to grant an exception to a religious claimant but made exceptions available to others. *Id.*

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: As a magistrate judge and judicial nominee, I cannot offer an opinion on how I would interpret the statute in a specific instance. If confronted with a case addressing this issue, I would apply Supreme Court and Sixth Circuit precedent, the statute, and all relevant law; carefully analyze the facts; consider the parties' arguments; and apply the law to the facts to reach a fair decision.

26. **Would 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: No.

    b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

    Response: No.

    c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

    Response: No.

    d. **Meritocracy or related values such as work ethic are racist or sexist?**

    Response: No.

27. **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 unaware of any such views taught anywhere. I am also aware of any such trainings offered at the United States District Court for the Eastern District of Michigan. I would not support any such trainings.

28. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

Response: Yes.

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

Response: As a sitting United States Magistrate Judge and a judicial nominee, I cannot offer an opinion on constitutional considerations for a political appointment. If confronted with a case addressing this issue, I would apply Supreme Court and Sixth Circuit precedent and all relevant law, carefully analyze the facts, consider the parties' arguments, and apply the law to the facts to reach a fair decision.

30. Is the criminal justice system systemically racist?

Response: I have not studied this question in depth and there are many definitions of the phrase "systemically racist." I am aware that members of Congress asserted that racial disparities existed in sentencing of specific narcotics offenses and that Congress sought to address such disparities by reducing the quantity disparity between crack cocaine and powder cocaine from 100:1 to 18:1 in the Fair Sentencing Act. If confirmed as a district judge, I would address any claims of racial discrimination by applying Supreme Court and Sixth Circuit precedent and all relevant law, carefully analyzing the facts, considering the parties' arguments, and applying the law to the facts to reach a fair decision.

31. President Biden has created a commission to advise him on reforming the U.S. Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: The appropriate number of Supreme Court Justices is a policy matter appropriate for policymakers. As a magistrate judge and judicial nominee, I am unable to express an opinion on the appropriate number of justices on the Supreme Court.

32. In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?

Response: No.

33. What do you understand to be the original public meaning of the Second Amendment?

Response: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment protects law abiding citizen's right to bear firearms in their homes and carry handguns outside their homes for self-defense. 128 S.Ct. 2783 (2008).

34. What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?

Response: In *New York State Rifle Association, Inc. v. Bruen*, the Supreme Court provided that when the Second Amendment covers an individual's conduct and the government seeks to regulate it, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." 142 S.Ct. 2111, 2126 (2022).

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

Response: Yes. The Supreme Court held in *District of Columbia v. Heller*, that under the Second Amendment individuals have the right hold and use firearms in their homes for self-defense. 128 S.Ct. 2783 (2008). The Supreme Court also held in *McDonald v. City of Chicago*, that the right to bear arms is a fundamental right. 561 U.S. 742 (2010). Further, the Court held in *New York State Rifle Association, Inc. v. Bruen*, that the Second Amendment protects an individual's right to carry a handgun outside the home for self-defense. *New York State Rifle Ass'n v. Bruen*, 142 S.Ct. 2111 (2022).

36. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: I am unaware of any Supreme Court or Sixth Circuit precedent stating that the right to own a firearm receives less protection than other individual rights enumerated in the Constitution.

37. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: I am unaware of any Supreme Court or Sixth Circuit precedent stating that the right to own a firearm receives less protection than the right to vote under the Constitution.

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

Response: As a magistrate judge and a judicial nominee, it is not appropriate for me to offer an opinion on this issue as it is currently being litigated in federal courts. If a case arose before me on this legal issue, I would apply Supreme Court and Sixth Circuit precedent, carefully consider the arguments of the parties, and apply the facts to the law to reach a fair result.

39. Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.

Response: Black's Law Dictionary defines prosecutorial discretion as a "a prosecutor's power to choose form the options available in a criminal case, such as filing charges, prosecuting, plea-bargaining, and recommending a sentence to the court." (7th ed. 1999). The distinction between an act of prosecutor discretion and substantive administrative rule change is being litigated in federal courts and as such, I cannot offer an opinion on it as a sitting magistrate judge and judicial nominee.

40. Does the President have the authority to abolish the death penalty?

Response: No. The death penalty is governed by 18 U.S.C. § 3591(a).

41. 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*, plaintiffs successfully sought to enjoin the nationwide eviction moratorium of the Centers for Disease Control and Prevention (CDC) during the COVID-19 pandemic. The district court and court of appeals stayed judgment pending appeal. 141 S.Ct. 2485, 2486 (2021). Plaintiffs opposed the stay. *Id.* The Supreme Court agreed with the district court's conclusion to grant the preliminary injunction given the lack of explicit Congressional authority to the CDC on an issue of "vast economic and political significance." *Id.* at 2489. The Court held that the balance of the equities weighed in favor of vacating the stay of judgment. *Id.* at 2489-90.

42. Since taking the bench you have written only about forty opinions. Only some of those opinions concern criminal matters, and only a portion of this subset concerned detention. Despite this small universe, you had four release orders revoked in criminal cases.

a. What do you attribute that to?

Response: As a magistrate judge, I estimate that I have handled over 100 bond determinations in criminal cases. In every bond determination, I consider the facts and applicable law, including the Bail Reform Act passed by Congress, which requires me to impose "the least restrictive further condition or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.SC. § 3142(c)(1)(B). As the question notes, in a small handful of cases, district judges disagreed with my decisions. I accept those decisions and will continue carefully applying the Bail Reform Act based on the specific facts of every case that comes before me.

b. What factors do you weigh to overcome the statutory presumption of detention?

Response: Where there is a statutory presumption of detention under the Bail Reform Act and 18 U.S.C. § 3142 applies, I analyze whether the defendant has come forward with some credible evidence to rebut the presumption "that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community[.]" *See* 18 U.S.C. § 3142(e)(3). The Sixth Circuit has held that this burden of production requires the person to provide "some evidence that he does not pose a danger to the community or a risk of flight." *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010) (internal quotation marks and citations omitted). The Sixth Circuit has held that this burden is "not heavy." *Id.* If the defendant rebuts the presumption, the presumption remains as a factor of consideration alongside the four 18 U.S.C. § 3142(g) factors: nature and seriousness of the offense;

weight of the evidence of risk of flight and dangerousness; personal history and characteristics of the defendant; and nature and seriousness of the danger to any person or the community posed by the defendant's release. *Id.*; 18 U.S.C. § 3142(g).

Senator Ben Sasse
Questions for the Record for Jonathan James Canada Grey
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
November 30, 2022

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

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

   Response: As a magistrate judge, I approach each case with an open mind, consider parties' arguments, apply relevant Supreme Court and Sixth Circuit precedent, consider persuasive legal authority in the absence of precedent, weigh relevant facts, and reach a conclusion applying the law to the facts being mindful at all times of a judge's oath to "administer justice without respect to persons." If confirmed as a district judge, I would follow this same approach.

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

   Response: I have never described myself with a particular label such as an originalist. If confirmed, I would apply Supreme Court and Sixth Circuit precedent interpreting the Constitution and laws.

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

   Response: I have never described myself with a particular label such as a textualist. If confirmed, I would apply Supreme Court and Sixth Circuit precedent interpreting the Constitution and laws. As a magistrate judge, where the text of the law is unambiguous, I apply the text and its plain meaning.

5. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

   Response: I believe the Constitution is an enduring document.

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

   Response: I greatly respect all Supreme Court Justices. I have not studied every Supreme Court Justice's jurisprudence in exacting detail. As a sitting magistrate judge I follow

controlling Supreme Court precedent and if confirmed as a district judge I would continue to do so.

7. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?**

Response: In the absence of controlling Supreme Court precedent, an appellate court is bound by its own precedent until it is overruled by an en banc decision of the appellate court or by the Supreme Court. Federal Rule of Appellate Procedure 35 applies to en banc considerations. As a magistrate judge, I follow controlling Sixth Circuit precedent and if confirmed as a district judge I would continue to do so.

8. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?**

Response: Please see my response to Question 7.

9. **What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?**

Response: As a magistrate judge, I follow controlling Supreme Court and Sixth Circuit precedent and if confirmed as a district judge I would continue to do so. Interpreting a statute requires the consideration of controlling Supreme Court and Sixth Circuit precedent interpreting the statute. In the absence of such controlling precedent, the plain language of the text of the statute applies. If the text of the statute is ambiguous, I would consult Supreme Court and Sixth Circuit cases on analogous statutes as persuasive authority, cases from other circuits, canons of statutory interpretation. Lastly, I would consult legislative history.

10. **If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?**

Response: No. As a magistrate judge and if confirmed as a district judge, I would follow the sentencing factors set by applicable precedent of the Supreme Court and the Sixth Circuit and Congress in 18 U.S.C. § 3553(a) which requires that a sentence "avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6).

Senator Josh Hawley
Questions for the Record

Jonathan Grey
Nominee, Eastern District of Michigan

1. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

    a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

    Response: I am unaware of Justice Ketanji Brown Jackson's sentencing practices as a district judge. If confirmed as a district judge, I would faithfully apply the Federal Sentencing Guidelines and 18 U.S.C. 3553(a) to any specific facts before me. I would also apply any Supreme Court and Sixth Circuit precedent.

    b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

    Response: Please see my response to Question 1a.

    c. **The enhancement for offenses involving the use of a computer**

    Response: Please see my response to Question 1a.

    d. **The enhancements for the number of images involved**

    Response: Please see my response to Question 1a.

2. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

    a. **Do you agree that the penalties should be aligned?**

Response: As a sitting magistrate judge and a judicial nominee, I cannot comment on this policy issue. I am obligated to apply federal law as it is written.

b. If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?

Response: As a sitting magistrate judge and a judicial nominee, I cannot comment on this policy issue. I am obligated to apply federal law as it is written.

c. If an offender before you is charged only with possession even though uncontested evidence shows the offender also committed the crime of receiving child pornography, will you aim to sentence the offender to between 5 and 10 years?

Response: I cannot provide an opinion on an issue that might arise before me if I were to be confirmed as a district judge. As a magistrate judge, sentencing is governed by the law and the facts, and I consider the 18 U.S.C. § 3553(a) factors prior to pronouncing a sentence. I also apply any Supreme Court and Sixth Circuit precedent. If I were confirmed as a district judge, I would follow this same approach.

3. 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 aware of that statement by Justice Marshall. In each case, I apply the governing law to the facts.

b. If not, do you think it is a violation of the judicial oath to hold that philosophy?

Response: I am required to apply Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed.

4. Do you believe that the Supreme Court's ruling in *Dobbs* v. *Jackson Women's Health Organization* is settled law?

Response: Yes. The decision of the Supreme Court in *Dobbs v. Jackson Women's Health Organization* is binding precedent.

5. What is the standard for each kind of abstention in the court to which you have been nominated?

Response: Pullman abstention applies where the resolution of a state law issue by the state court would eliminate the need for the federal court to decide a federal constitutional issue. *R.R. Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941). "Pullman abstention instructs courts to avoid exercising jurisdiction in cases involving an ambiguous state statute that may be interpreted by state courts so as to eliminate, or at least alter materially, the constitutional question raised in federal court." *Fowler v. Benson*, 848 F.3d 247, 255 (6th Cir. 2017).

"The Younger abstention doctrine, meanwhile, cautions federal courts against exercising jurisdiction in cases where they are asked to enjoin pending state proceedings." *Fowler v. Benson*, 848 F.3d 247, 255 (6th Cir. 2017) (citing *Younger v. Harris*, 401 U.S. 37 (1977)).

Burford abstention avoids federal involvement where there is a complex state regulatory scheme or an issue of great importance to the state. *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959). In the Sixth Circuit, "Burford abstention applies only to statewide policy rather than local policy." *Saginaw Housing Comm. v. Bannum, Inc.*, 567 F.23d 620, 628 (6th Cir. 2009).

Under *Colorado River Water Conservation District v. United States*, a federal court may dismiss or stay an action where there are parallel state court proceedings. 424 U.S. 800 (1976). 424 U.S. 800 (1976). The Sixth Circuit provides for the following balancing test based upon the specific facts of the case: "(1) whether the state court has assumed jurisdiction over any res or property; (2) whether the federal forum is less convenient to the parties; (3) avoidance of piecemeal litigation; and (4) the order in which jurisdiction was obtained .... (5) whether the source of governing law is state or federal; (6) the adequacy of the state court action to protect the federal plaintiff's rights; (7) the relative progress of the state and federal proceedings; and, (8) the presence or absence of concurrent jurisdiction." *Romine v. Compuserve Corp.*, 160 F.3d 337, 340-41 (6th Cir. 1998).

The *Rooker/Feldman* doctrine requires that lower federal courts abstain from serving as appellate courts after a state's highest court has rendered a decision. *Anderson v. Charter Twp. of Ypsilanti*, 266 F.3d 487, 492 (6th Cir. 2001) (citing *District of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462, 476 (1983)).

6. **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.**

7. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

   Response: I apply Supreme Court and Sixth Circuit precedent as a magistrate judge and would continue to do so if confirmed as a district judge. In the Second Amendment context, the Supreme Court in *District of Columbia v. Heller* directed that the original public meaning of the Constitution's text governs. 128 S. Ct. 2783 (2008). I would apply this precedent and any other precedent governing statutory interpretation of the Constitution.

8. **Do you consider legislative history when interpreting legal texts?**

   Response: Where the text of a statute is unambiguous, the plain language governs and legal analysis ends after the text is applied to the relevant facts. If the text is ambiguous, I apply Supreme Court and Sixth Circuit precedent, consult principles of statutory interpretation, review similar statutes in Supreme Court and Sixth Circuit precedent. As a last resort, I consider legislative history.

   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: In *Garcia v. United States*, the Supreme Court identified committee reports on a bill as "the authoritative source for finding the Legislature's intent." 469 U.S. 70, 76 (1984).

   b. **When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?**

      Response: It is not appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution.

9. **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: For Eighth Amendment challenges to an execution protocol, the Supreme Court has held that a prisoner "must identify an alternative that is feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain." *Glossip v. Gross*, 576 U.S. 863, 877, 880 (2015) (internal quotation marks omitted) The Sixth Circuit follows the same standard. *Middlebrooks v. Parker*, 15 F.4th 784, 788 (6th Cir. 2021); *In re Ohio Execution Protocol*, 860 F.3d 881 (6th Cir. 2017).

10. 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 Glossip v. Gross*, 576 U.S. 877-80 (2015).

11. 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: No. The Supreme Court held in *District Attorney's Office for the Third Judicial District v. Osborne*, that the Constitution's substantive due process clause does not require DNA analysis for a habeas petitioner. 557 U.S. 52, 73-75 (2009). The Sixth Circuit held the same in *In re Smith*. 349 F. App'x 12, 15 (6th Cir. 2009)

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.

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 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: According to Supreme Court precedent, governmental action that burdens the free exercise of religion is subject to strict scrutiny if it is not facially neutral or generally applicable. *Tandon v. Newsom*, 141 S. Ct. 1294, 1297-98; *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018); *Fulton v.*

City of Philadelphia 141 S. Ct. 1868 (2021). Where discretionary exceptions exist for secular activity rather than religious activity, the governmental action is not neutral and generally applicable. *Id.* To survive strict scrutiny, the restriction must be narrowly tailored to meet a compelling government interest. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020).

14. 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 13.

15. 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: Sincerely held religious beliefs invoke protection under the First Amendment's Free Exercise clause even if the beliefs are outside the "commands of a particular religious organization." *Frazee v. Ill. Dep't of Empl. Sec.*, 109 S. Ct. 1514, 1517-18 (1989). Citing the Supreme Court, the Sixth Circuit has held that courts must determine whether the plaintiff's conduct reflects "an honest conviction" "consistent . . . with her . . . religious beliefs." *Fox v. Washington*, 949 F.3d 270, 277 (6th Cir. 2020) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014)).
Sincerely held religious beliefs invoke protection under the First Amendment. *Frazee v. Ill. Dep't of Empl. Sec.*, 109 S. Ct. 1514, 1517-18 (1989).

16. 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 held that the Second Amendment protects law abiding citizen's right to bear firearms in their homes and carry handguns outside their homes for self-defense. 128 S. Ct. 2783 (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.

17. 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: Justice Holmes articulated his view in the dissent to *Lochner v. New York* that the Constitution does not embody any particular economic theory. If confirmed, I would apply all Supreme Court and Sixth Circuit precedent.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: Upon information and research, *Lochner v. New York*, 198 U.S. 45 (1905) was abrogated by Supreme Court decisions including *West Coast Hotel v. Parrish,* 300 U.S. 379 (1937). If confirmed, I would apply all Supreme Court and Sixth Circuit precedent.

18. 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: Yes, upon research and belief.

a. If so, what are they?

Response: Upon research and belief, *Dred Scott v. Sandford*, 60 U.S. 393 (1857) was never formally overruled by the Supreme Court, but the ratification of the Thirteenth and Fourteenth Amendments made it no longer good law.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: Yes.

19. 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 unable to express an opinion on Judge Hand's statement. I would apply all Supreme Court and Sixth Circuit precedent to the question of what constitutes a monopoly if confronted with that legal issue. While the Supreme Court has never articulated a specific numerical value of market share that constitutes a monopoly, the Sixth Circuit has noted that "where the market share is 75-80% or greater, this should be regarded as a starting point" to assess whether a monopoly exists. *Byars v. Bluff City News Co.*, 609 F.2d 843, 850 (6th Cir. 1979).

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my response to Question 19 above.

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 19 above.

20. Please describe your understanding of the "federal common law."

Response: The Supreme Court has not recognized "federal common law" but noted that in limited circumstances, federal courts may "craft the rule of decision" in areas such as admiralty. *Rodriguez v. FDIC*, 140 S. Ct. 713, 717 (2020).

21. 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: A federal court applying state law looks to rules of decisions of the state's highest courts. *Lindenberg v. Jackson Nat'l Life Ins. Co.*, 912 F.3d 348, 364 (6th Cir. 2018). I would apply all relevant Supreme Court and Sixth Circuit precedent if confronted with this issue.

a. Do you believe that identical texts should be interpreted identically?

Response: Please see my response to Question 21.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Please se my response to Question 21.

22. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: As a magistrate judge and a federal judicial nominee bound by the Code of Conduct for United States Judges, generally it is inappropriate for me to comment on whether the United States Supreme Court correctly decided a case. However, the issues litigated in *Brown v. Board of Education* are unlikely to be litigated in the future. I view this case as an exception to the general rule preventing me from offering an opinion on Supreme Court decisions. The Court correctly decided the case. As a magistrate judge I faithfully apply all Supreme Court and Sixth Circuit precedent and would continue to do so if confirmed as a district judge.

23. Do federal courts have the legal authority to issue nationwide injunctions?

Response: If confirmed, I would apply Federal Rule of Civil Procedure 65 as well as Supreme Court and Sixth Circuit precedent to a request for an injunction. The legal authority to issue nationwide injunctions is being litigated right now, and as a sitting magistrate judge and judicial nominee, I cannot provide an opinion on a case likely to come before me if confirmed.

a. If so, what is the source of that authority?

Response: Please see my response to Question 23a.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Please see my response to Question 23a.

24. 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: If confirmed, I would apply Federal Rule of Civil Procedure 65 as well as Supreme Court and Sixth Circuit precedent to a request for an injunction. The Sixth Circuit has articulated the following questions to apply to a request for an injunction:

Has the plaintiff established "that he is likely to succeed on the merits"? Would the plaintiff likely suffer "irreparable harm in the absence of preliminary relief"? Does the "balance of equities" tip in the plaintiff's favor? And does "the public interest" favor an injunction? *Arizona v. Biden*, 31 F.4th 375 (6th Cir. 2022).

25. What is your understanding of the role of federalism in our constitutional system?

Response: The Constitution provides for a division of powers between the federal government and the states and enumerates limited, specific powers that the federal government possesses.

26. 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 5.

27. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: If confirmed and faced with a determination of whether to award injunctive relief, I would balance the following four factors the Sixth Circuit has directed district courts to use: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction." *ACLU of Kentucky v. McCreary County, Kentucky*, 354 F.3d 438, 445 (6th Cir. 2003) (internal quotation marks omitted). I would apply all relevant Supreme Court and Sixth Circuit precedent to determine whether to award damages and/or injunctive relief.

28. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: In *Washington v. Glucksberg*, the Supreme Court held that substantive due process protects fundamental rights "deeply rooted in this Nation's history and tradition" which are "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." 521 U.S. 702, 720-21 (1997) (internal quotation marks and citation omitted). Such fundamental rights include the right to marital privacy and the right to use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015), *Loving v. Virginia*, 388 U.S. 1 (1967); the right to bodily integrity, *Rochin v.*

California, 342 U.S. 165 (1952); the right to have children and right to direct children's upbringing, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); and the right to refuse unwanted medical treatment, *Cruzan v. Dir. Missouri Dep't of Health*, 497 U.S. 261 (1990).

29. 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: According to Supreme Court precedent, governmental action that burdens the free exercise of religion is subject to strict scrutiny if it is not facially neutral or generally applicable. *Tandon v. Newsom*, 141 S. Ct. 1294, 1297-98; *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719 (2018); *Fulton v. City of Philadelphia* 141 S. Ct. 1868 (2021). Where discretionary exceptions exist for secular activity rather than religious activity, the governmental action is not neutral and generally applicable. *Id.* To survive strict scrutiny, the restriction must be narrowly tailored to meet a compelling government interest. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020).

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 of the First Amendment protects the freedom of worship and to believe or not believe. *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014).

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: According to Supreme Court precedent, governmental action that burdens the free exercise of religion is subject to strict scrutiny if it is not facially neutral or generally applicable. *Tandon v. Newsom*, 141 S. Ct. 1294, 1297-98; *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018); *Fulton v. City of Philadelphia* 141 S. Ct. 1868 (2021). Where discretionary exceptions exist for secular activity rather than religious

activity, the governmental action is not neutral and generally applicable. *Id.* To survive strict scrutiny, the restriction must be narrowly tailored to meet a compelling government interest. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020).

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: Sincerely held religious beliefs invoke protection under the First Amendment's Free Exercise clause even if the beliefs are outside the "commands of a particular religious organization." *Frazee v. Ill. Dep't of Empl. Sec.*, 109 S. Ct. 1514, 1517-18 (1989). Citing the Supreme Court, the Sixth Circuit has held that courts must determine whether the plaintiff's conduct reflects "an honest conviction" "consistent . . . with her . . . religious beliefs." *Fox v. Washington*, 949 F.3d 270, 277 (6th Cir. 2020) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (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 applies to all federal laws and prevents neutral applications of federal law from substantially burdening the free exercise of religion unless the law is in furtherance of a compelling governmental interest and narrowly tailored. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014).

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.

30. 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: From my understanding, this statement means that a judge should rule based upon the law and facts without regard to the judge's personal feelings.

31. 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.

32. 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.

33. Do you believe America is a systemically racist country?

Response: I have not studied this question in depth and there are many definitions of the phrase "systemically racist." If confirmed as a district judge, I would address any claims of racial discrimination by applying Supreme Court and Sixth Circuit precedent and all relevant law, carefully analyzing the facts, considering the parties' arguments, and applying the law to the facts to reach a fair decision.

34. Have you ever taken a position in litigation that conflicted with your personal views?

Response: Yes.

35. How did you handle the situation?

Response: I fulfilled my professional and ethical obligations as a legal advocate for clients.

36. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

37. Which of the Federalist Papers has most shaped your views of the law?

Response: No specific Federalist Paper has particularly shaped my views of the law.

38. Do you believe that an unborn child is a human being?

Response: As a magistrate judge and a judicial nominee, I cannot provide an opinion on this question.

39. 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: No.

40. 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.

41. 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.

42. 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.

43. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

44. 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: My understanding of the duty of candor in testifying before the Senate Judiciary Committee and answering questions of the committee requires that nominees testify truthfully and provide truthful answers to these questions. I testified truthfully at the hearing under oath and have provided truthful answers to these written questions.

Questions from Senator Thom Tillis
for Jonathan James Canada Grey
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: According to Black's Law Dictionary, "judicial activism" is "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 2019). No, I do not consider this approach appropriate, according to the definition of "judicial activism" provided by Black's Law Dictionary (11th ed. 2019). Judgments issued by judges must be based upon application of precedent to specific facts. As a magistrate judge, I approach each case with an open mind, consider parties' arguments, apply relevant Supreme Court and Sixth Circuit precedent, consider persuasive legal authority in the absence of precedent, weigh relevant facts, and reach a conclusion applying the law to the facts being mindful at all times of a judge's oath to "administer justice without respect to persons." If confirmed as a district judge, I would follow this same approach.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: I believe 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.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Yes. A judge's role is to reach a fair and impartial decision based upon the application of controlling precedent to the applicable facts. This neutral approach does not change based upon 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 apply all Supreme Court and Sixth Circuit controlling decisions concerning the Second Amendment, including *District of Columbia v. Heller*, *McDonald v. City of Chicago*, and *New York Rifle Association v. Bruen*.

8. **How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?**

   Response: I would faithfully apply all Supreme Court and Sixth Circuit precedent in such a case, including *District of Columbia v. Heller*, *McDonald v. City of Chicago,* and *New York Rifle Association v. Bruen*. I would determine whether such a policy was "consistent with this Nation's historical tradition of firearm regulation" as the Supreme Court directed in *Bruen*. 142 S.Ct. 2111, 2126 (2022). I would carefully apply all Supreme Court and Sixth Circuit precedent. If confronted with the issue of whether a local official should be able to use a crisis such as COVID-19 to limit someone's constitutional rights, I would apply all Supreme Court and Sixth Circuit precedent, including *Tandon v. Newsom*, 141 S.Ct. 1294 (2021), which analyzed constitutional rights during the COVID-19 pandemic. I would analyze the law and apply it to the specific facts. If confronted with the issue of whether a pandemic limits someone's constitutional rights, I would apply Supreme Court and Sixth Circuit precedent and all relevant law, carefully analyze the facts, consider the parties' arguments, and apply the law to the facts to reach a fair decision.

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 would apply Supreme Court and Sixth Circuit precedent, including *Saucier v. Katz*, 533 U.S. 194, 201 (2001) and its two-step test. The first step requires a reviewing court to determine, in the light most favorable to the plaintiff, "whether the facts alleged show the officer's conduct violated a constitutional right." *Id.* If the facts could establish the violation of a constitutional right, "the next, sequential step is to ask whether the right was clearly established." *Id.* "This inquiry turns on the objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken." *Pearson v. Callahan*, 555 U.S. 223, 244 (2009) (internal quotation marks and citation omitted). If the right was not clearly established, the court need not consider the first step and must grant qualified immunity to law enforcement personnel and departments. *Id.* at 242. Qualified immunity does not apply if both steps are resolved in the affirmative. *Id.* at 227.

10. **Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?**

Response: Whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers is a question for policymakers to consider. As a sitting magistrate judge and a judicial nominee, I follow all Supreme Court and Sixth Circuit precedent.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: As a sitting magistrate judge and judicial nominee, I cannot offer an opinion on the proper scope of qualified immunity protections for law enforcement as it is a question for policymakers.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: As a sitting magistrate judge and a judicial nominee, I am unable to express an opinion on the Supreme Court's patent eligibility jurisprudence. I would faithfully apply all Supreme Court and Sixth Circuit precedent on patent eligibility, including *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013); *Mayo Collaborative Svs. v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); and *Bilski v. Kappos*, 561 U.S. 593 (2010).

13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.

a. *ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?

Response: As a sitting magistrate judge and a judicial nominee, I am unable to opine on this hypothetical. If confirmed, I would apply all Supreme Court and Sixth Circuit jurisprudence to the facts including *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013); *Mayo Collaborative Svs. v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); and *Bilski v. Kappos*, 561 U.S. 593 (2010).

b. *FinServCo* develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology.

Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?

Response: Please see my response to Question 13a.

c. ***HumanGenetics* Company wants to 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 13a.

d. ***BetterThanTesla ElectricCo* develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla*'s billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Please see my response to Question 13a.

e. ***Natural Laws and Substances, Inc.* specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: Please see my response to Question 13a.

f. **A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Please see my response to Question 13a.

g. *BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?

Response: Please see my response to Question 13a.

h. Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?

Response: Please see my response to Question 13a.

i. *Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?

Response: Please see my response to Question 13a.

j. *Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?

Response: Please see my response to Question 13a.

14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: Please see my response to Question 13a.

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 sitting magistrate judge I have handled discovery matters in cases involving copyright law.

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: I have not adjudicated any cases involving the Digital Millennium Copyright Act as a sitting magistrate judge. In private practice and government service, I have not had any experience 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: 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: I have handled First Amendment and free speech claims in prisoner litigation involving 42 U.S.C. § 1983 claims. I have not handled copyright claims addressing free speech as a magistrate judge and did not practice in this area prior to serving as a magistrate judge.

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 a statute, I analyze the text of the statute. If there is no ambiguity, then the analysis ends, and I apply the plain meaning of the text of the statute to any relevant facts and reach a just result. If there is ambiguity in the text of the statute, I consult Supreme Court and Sixth Circuit precedent, principles of statutory construction, and precedential authority interpreting similar text. As a last option, I consult legislative history.

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: If confirmed and faced with this issue, I would apply Supreme Court and Sixth Circuit precedent, and consider whether deference applies to the agency's advice and analysis. "*Chevron* [deference] requires a reviewing court to give effect to an agency's reasonable interpretation (offered in the form of an agency regulation) of an ambiguous statute" but "is not required where the interpretation is offered via an informal medium—such as an opinion letter, agency manual, policy statement, or enforcement guideline—that lacks the force of law." *Chao v. OSHA*, 540 F.3d 519, 527 (6th Cir. 2008) (citing *Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000)). In the absence of "notice-and-comment rulemaking," an agency's advice and analysis receives "limited *Skidmore* deference . . . that 'depend[s] upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'" *Chao*, 540 F.3d at 526 (quoting *Skidmore v. Swift & Co.*, 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: As a magistrate judge and judicial nominee, I am unable to opine on this policy question.

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: Judges regularly apply laws passed before the advent of new technology and consider new laws passed by policymakers. I would apply all Supreme Court and Sixth Circuit precedent if confirmed.

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: Please see my response to Question 17a.

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: As a sitting magistrate judge, I focus on being fair and impartial and well-prepared. If confirmed, I would continue to do so. I would never engage in any type of effort to encourage "judge shopping" or "forum shopping." I am unable to offer an opinion on this policy question as a sitting magistrate judge and judicial nominee.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: Please see my response to Question 18a.

c. Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?

Response: No.

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: If confirmed, I would not seek to attract a particular type of case or litigant and would apply Supreme Court and Sixth Circuit precedent to any issue that arose before me.

19. In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.

a. What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?

Response: As a sitting magistrate judge and a judicial nominee, I cannot offer an opinion on this question.

b. Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?

Response: Please see my response to Question 19a.

20. When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?

a. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: Please see my response to Question 19a.

b. To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: Please see my response to Question 19a.

21. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

a. If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?

Response: As a magistrate judge and a judicial nominee, it would be inappropriate for me to provide an opinion on a district judge's behavior.

b. Would five mandamus reversals be sufficient? Ten? Twenty?

Response: Please see my response to Question 21a.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Ms. Julia Eleanor Kobick
Nominee to be United States District Judge, District of Massachusetts

1. **In *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, you authored an amicus brief on behalf of Massachusetts arguing that there should be no religious or moral exemptions to the contraception mandate for employers, including religious organizations. Could you please explain why you argued that the contraception mandate was necessary as applied to nuns?**

   Response: In my capacity as Assistant Attorney General for the Commonwealth of Massachusetts, I co-authored an amicus brief on behalf of Massachusetts, 19 other states, and the District of Columbia in support of the respondents in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020). The brief supported Pennsylvania and New Jersey's arguments that the religious and moral exemption rules promulgated by the federal agencies exceeded the scope of the agencies' authority under the Affordable Care Act, 42 U.S.C. § 300gg-13(a)(4), and did not satisfy the procedural requirements of the Administrative Procedure Act. The Supreme Court disagreed, holding that the rules were within the scope of the agencies' authority under the Affordable Care Act and comported with the Administrative Procedure Act. If confirmed, I would fully and faithfully apply the Court's decision and holding in *Little Sisters*.

2. **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: The question whether a police officer or social worker should respond to a domestic violence call where there is an allegation that the aggressor is armed is a question for policy makers. Consistent with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on that question.

3. **Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest racial injustice?**

   Response: In accordance with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on whether it is appropriate for protesters to ignore social distancing mandates and gathering limitations to protest racial injustice. If any case were to come before me concerning social distancing mandates, gathering limitations, and/or the First Amendment, I would impartially and faithfully apply all relevant Supreme Court and First Circuit precedent.

4. **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: In accordance with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on this question. If any case were to come before me on the lawfulness of such restrictions, as applied to religious exercise, I would impartially and faithfully apply all relevant Supreme Court and First Circuit precedent, including the Supreme Court's decisions in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curiam), and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (per curiam).

5. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

Response: In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court held that a police officer may, consistent with the Fourth Amendment, stop and frisk a person when the officer has "a reasonable, articulable suspicion of [the] individual's involvement in some criminal activity." *United States v. Dion*, 859 F.3d 114, 124 (1st Cir. 2017). Any "action undertaken with respect to the stop 'must be reasonably related in scope to the stop itself unless the police have a basis for expanding their investigation.'" *Id.* (quoting *United States v. Ruidíaz*, 529 F.3d 25, 28-29 (1st Cir. 2008)).

6. **If confirmed, do you intend to allow your prior advocacy for gun control influence your decisions concerning guns, *Heller*, in particular?**

Response: If confirmed, I would fully and faithfully apply all relevant Supreme Court and First Circuit precedent concerning the Second Amendment, including the Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *Caetano v. Massachusetts*, 577 U.S. 411 (2016), and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). As with any legal issue, I would impartially apply the law to the facts of the case, and my prior work as an Assistant Attorney General would have no influence on my decisions.

7. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

Response: The Constitution is a written document whose text does not change unless it is amended in accordance with the procedures set forth in Article V. The Supreme Court has long affirmed that the Constitution was "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819) (emphasis removed). The Court has accordingly adopted different tests to apply the Constitution's provisions to modern-day facts and circumstances. If confirmed, in assessing any constitutional claim that might come before me, I would adhere to Supreme Court and First Circuit precedent on the constitutional provision at issue.

8. **Under Supreme Court and First Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: The Supreme Court has noted that the distinction between questions of law and questions of fact can be "vexing." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). The Federal Rules of Evidence recognize two types of facts: adjudicative facts and legislative facts. *See* Fed. R. Evid. 201 (Advisory Committee's note to subd. (a)). Adjudicative facts are "simply the facts of the particular case." *Id.* They are established through documentary or testimonial evidence and are typically found by a jury. *Id.* Legislative facts "are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body." *Id.* Legislative facts are typically subject to judicial notice. *Id.* Under First Circuit precedent, "[w]hether a fact is adjudicative or legislative depends not on the nature of the fact . . . but rather on the use made of it (*i.e.*, whether it is a fact germane to what happened in the case or a fact useful in formulating common law policy or interpreting a statute) and the same fact can play either role depending on context." *United States v. Bello*, 194 F.3d 18, 22 (1st Cir. 1999). Questions of law are resolved by a judge.

9. **Please discuss your criminal federal legal experience, including the number of felony cases that you have personally handled, how many misdemeanor cases you have personally handled, how many times you have argued before the court in a criminal matter and how many criminal jury trials you have participated in as lead/co-counsel?**

Response: My professional practice has primarily been in civil litigation. However, as Deputy State Solicitor, I often review appellate briefs concerning Massachusetts criminal law and procedure and consult on cases involving Massachusetts criminal law. In addition, a number of the civil cases I have handled have involved substantive issues of criminal law or have turned on an understanding of a criminal prosecution. My federal civil cases have also required reference to and objections under the Federal Rules of Evidence, which apply in federal criminal cases. As a law clerk at all three levels of the federal judiciary, I assisted my judges in handing their criminal dockets, including assisting Judge Saylor in overseeing federal criminal trials, sentencing hearings, change of plea hearings, hearings on motions to suppress, and other criminal proceedings. If confirmed, I would ensure that I am well versed in the substance and procedure of federal criminal law.

10. **Please discuss your familiarity with the Federal Rules of Criminal Procedure and the United States Sentencing Commission's Advisory Sentencing Guidelines. Specifically:**
    a. **How often have you cited to either of these tomes during the course of your work?**
    b. **How often have you had an opportunity to work within these constructs during the course of your career?**

Response: My professional practice has primarily been in civil litigation. While I am familiar with the Federal Rules of Criminal Procedure and the United States Sentencing

Commission's Advisory Sentencing Guidelines, and I worked with the Rules and Guidelines while serving for three years as a law clerk, I have not, to my recollection, had occasion to cite to either compilation during my work as Assistant Attorney General or as Deputy State Solicitor. If confirmed, I would ensure that I am well versed in the Rules and the Guidelines before presiding over any criminal proceeding.

11. **Should judicial decisions take into consideration principles of social "equity"?**

Response: I am not familiar with the definition of "social equity." Black's Law Dictionary defines "equity" as "fairness; impartiality; even-handed dealing." Black's Law Dictionary 619 (9th ed. 2004). Judicial decisions should be fair and impartial.

12. **What is implicit bias?**

Response: I generally understand the concept of implicit bias to refer to a form of bias or cognitive heuristic that occurs unconsciously and automatically, and that can affect judgments, decisions, and behaviors.

13. **Is the federal judiciary affected by implicit bias?**

Response: I understand the concept of implicit bias to refer to biases or judgments that operate below the level of an individual's conscious awareness. The question whether an institution, like the federal judiciary, is affected by implicit bias is a systemic question most appropriate for policy makers to consider. If confirmed, I would work to ensure that my decisions are free from bias, including by diligently reviewing the record, carefully considering arguments, writing thoroughly reasoned decisions, engaging with colleagues and parties with the spirit of open-mindedness, and adhering to procedural requirements and precedent. And I would strive to treat all who come into my courtroom equally and fairly, as individuals.

14. **Do you have any implicit biases? If so, what are they?**

Response: I understand the research on implicit bias to demonstrate that all people, myself included, have implicit biases that operate below the level of conscious awareness. If confirmed, I would work to ensure that my decisions are free from bias, including by diligently reviewing the record, carefully considering arguments, writing thoroughly reasoned decisions, engaging with colleagues and parties with the spirit of open-mindedness, and adhering to procedural requirements and precedent. And I would strive to treat all who come into my courtroom equally and fairly, as individuals.

15. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: The First Amendment protects the right to criticize public officials. *See New York Times v. Sullivan*, 376 U.S. 254, 269-71 (1964). The speech rights safeguarded by the First Amendment reflect America's "national commitment to the principle that debate

on public issues should be uninhibited, robust, and wide-open." *Id.* at 270. At the same time, the Supreme Court has recognized that "the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy," and that "it is of the utmost importance that the administration of justice be absolutely fair and orderly." *Cox v. Louisiana*, 379 U.S. 559, 562 (1965).

16. **Do you think the Supreme Court should be expanded?**

Response: The question whether the Supreme Court should be expanded is a question for policy makers. It would not be appropriate for me, as a judicial nominee, to comment on the size of the Supreme Court. If I were confirmed, I would be bound by Supreme Court precedent, and I would fully and faithfully apply that precedent.

17. **Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?**

Response: If confirmed, I would apply the factors set forth in 18 U.S.C. § 3553(a) whenever I sentence a defendant. That statute requires the court to consider, among other things, "the need for the sentence imposed—(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2). Each of these factors would guide my approach to sentencing.

18. **In what situation(s) does qualified immunity not apply to a law enforcement officer in Massachusetts?**

Response: Law enforcement officials are entitled to qualified immunity from individual-capacity claims for damages so long as "'their conduct [did] not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "Whether qualified immunity can be invoked depends on the 'objective legal reasonableness' of the official's act." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1866 (2017) (quoting *Harlow*, 457 U.S. at 819). Each assertion of qualified immunity must be analyzed individually and "depends very much on the facts of each case." *Brousseau v. Haugen*, 543 U.S. 194, 201 (2004).

19. **Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.**

Response: The allocation of funds to police departments and support services is a matter for policy makers to consider. In accordance with the Code of Conduct for United States

Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on that issue.

20. **Do you believe legal gun purchases have caused the violent crime spike?**

Response: The question whether legal gun purchases have caused a violent crime spike is a matter for policy makers to consider. In accordance with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on that issue.

21. **Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: I am not familiar with all of the Supreme Court decisions from the last 50 years. However, in my view, the role of an Article III judge is to fairly and impartially resolve the case or controversy before her. I would approach each case cognizant of the limits on judicial power, with an open mind, and with humility. In every case, I would consult the relevant precedent from the Supreme Court and First Circuit. I would carefully review the factual record, the parties' written submissions, and the parties' arguments. I would engage with the parties respectfully and work diligently to determine how the law applies to the facts of the case. In writing decisions, I would strive to explain my reasoning clearly, so that the parties and the public understand why the law requires a particular outcome.

22. **Please identify a First Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: I am not familiar with all of the First Circuit decisions from the last 50 years. Please see my response to Question 21, which describes my judicial philosophy.

23. **Please state the governing law for self-defense in Massachusetts and the First Circuit.**

Response: Under Massachusetts law, when "a defendant asserts that he or she acted in self-defense, the trier of fact must consider whether the defendant had 'a reasonable ground to believe' that he or she 'was in imminent danger of death or serious bodily harm,' from which the only way to save him- or herself was by using deadly force; whether, after availing him- or herself 'of all proper means to avoid physical combat,' resort to deadly force was necessary; and whether the amount of force used by the defendant 'was reasonably necessary in all the circumstances of the case.'" *Commonwealth v. Williams*, 481 Mass. 799, 805, 119 N.E.3d 1171, 1178 (2019) (quoting *Commonwealth v. Glacken*, 451 Mass. 163, 167, 883 N.E.2d 1228, 1232 (2008)); *accord Fortini v. Murphy*, 257 F.3d 39, 49 n.7 (1st Cir. 2001).

24. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

a. **Was *Brown v. Board of Education* correctly decided?**

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. That said, because the constitutionality of *de jure* racial segregation in public schools is one of the very few issues not likely to be relitigated, I am comfortable stating that I believe *Brown v. Board of Education* was correctly decided.

b. **Was *Loving v. Virginia* correctly decided?**

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. That said, because the constitutionality of laws prohibiting interracial marriage is one of the very few issues not likely to be relitigated, I am comfortable stating that I believe *Loving v. Virginia* was correctly decided.

c. **Was *Griswold v. Connecticut* correctly decided?**

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. The Supreme Court's decision in *Griswold v. Connecticut* is binding precedent, and I would apply it fully and faithfully.

d. **Was *Roe v. Wade* correctly decided?**

Response: The Supreme Court's decision in *Roe v. Wade* was overruled by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

e. **Was *Planned Parenthood v. Casey* correctly decided?**

Response: The Supreme Court's decision in *Planned Parenthood v. Casey* was overruled by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

f. **Was *Gonzales v. Carhart* correctly decided?**

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. The Supreme Court's decision in *Gonzales v. Carhart* is binding precedent, and I would apply it fully and faithfully.

g. **Was *District of Columbia v. Heller* correctly decided?**

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. The Supreme Court's decision in *District of Columbia v. Heller* is binding precedent, and I would apply it fully and faithfully.

h. **Was *McDonald v. City of Chicago* correctly decided?**

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. The Supreme Court's decision in *McDonald v. City of Chicago* is binding precedent, and I would apply it fully and faithfully.

i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. The Supreme Court's decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent, and I would apply it fully and faithfully.

j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. The Supreme Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen* is binding precedent, and I would apply it fully and faithfully.

k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* is binding precedent, and I would apply it fully and faithfully.

25. **How do you understand the difference, if any, between freedom of religion and freedom of worship?**

Response: I do not understand the Supreme Court to have drawn a distinction between the freedom of religion and the freedom of worship for purposes of the Free Exercise Clause of the First Amendment. The Supreme Court has described the right protected by

the Free Exercise Clause as both the "free exercise of religion" and the "freedom of worship." *See, e.g.*, *Carson v. Makin*, 142 S. Ct. 1987, 1996 (2022) ("The Free Exercise Clause of the First Amendment protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.'" (quoting *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 450 (1988))); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942) (explaining that the "freedom of worship" is a fundamental right made applicable to the States by the Fourteenth Amendment (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940))). Government regulations that burden religious exercise and are not "neutral and generally applicable" trigger strict scrutiny under the Free Exercise Clause. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam).

26. **Do you believe that the federal government should decriminalize possession of any drugs?**

Response: The question whether the federal government should decriminalize possession of any drug is a question for policy makers. In accordance with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on that question.

27. **Do you agree that the First Amendment is more often a tool of the powerful than the oppressed?**

Response: If confirmed, my personal views regarding the First Amendment would play no role in my judicial decision-making. If an issue concerning the First Amendment were to arise, I would be bound by, and would adhere to, the relevant Supreme Court and First Circuit precedent.

28. **What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court clarified the methodology applicable to the review of Second Amendment claims. First, a court must assess whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 2126. If so, "the Constitution presumptively protects that conduct." *Id.* The government then bears the burden of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearms regulation." *Id.* To make that showing, the government must identify an historical analogue that is "relevantly similar" to the challenged regulation. *Id.* at 2132. If confirmed, I would apply this methodology in any Second Amendment case.

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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: Before I submitted my application to the Massachusetts Advisory Committee on Judicial Nominations, I spoke with Christopher Kang about the application process in Massachusetts. After I was nominated, I received an email from Christopher Kang congratulating me on the nomination. I have not spoken with anyone else from Demand Justice.

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: 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: I have not been in contact with anyone from the Alliance for Justice. Please see my response to Question 29(c) to the extent this question refers to contact with anyone associated with Demand Justice.

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: I am not aware of the organizations identified in this question and have not interacted with any of them.

    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: Senator Elizabeth Warren and Senator Edward Markey convened an Advisory Committee on Massachusetts Judicial Nominations to screen and interview candidates for the U.S. District Court for the District of Massachusetts. I submitted my initial application to the Advisory Committee on January 20, 2021, and I was interviewed on February 4, 2021. On March 31, 2022, after the Advisory Committee announced it was soliciting additional applications, I re-submitted my application materials. I interviewed again with the Advisory Committee on April 14, 2022.

On April 25, 2022, I interviewed with Senator Warren and Senator Markey and four members of their staff. I then interviewed with attorneys from the White House Counsel's Office on May 2, 2022. Since May 10, 2022, I have been in contact with attorneys from the Office of Legal Policy of the Department of Justice. I was nominated to be a United States District Judge on August 1, 2022.

35. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: Please see my response to Question 29(c).

36. **During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

37. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? 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.

38. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

39. **During your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

40. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: I interviewed with attorneys from the White House Counsel's Office on May 2, 2022. Since May 10, 2022, I have been in communication with attorneys who work in the Office of Legal Policy at the Department of Justice and the White House Counsel's Office.

41. **Please explain, with particularity, the process whereby you answered these questions.**

Response: I was sent these questions by the Office of Legal Policy of the Department of Justice on December 7, 2022. I began researching and responding to the questions immediately thereafter. The Office of Legal Policy provided me with limited feedback before I finalized my answers. The answers are all my own.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Julia Kobick, nominated to be United States District Judge for the District of Massachusetts

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. Congress has passed a number of statutes, like Title VII of the Civil Rights Act of 1964, that prohibit discrimination on the basis of race. The Supreme Court has also long held, for purposes of the Equal Protection Clause of the Fourteenth Amendment and the equal protection component of the Fifth Amendment, that race-based classifications are subject to strict scrutiny, and therefore must be narrowly tailored to a compelling government interest. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995).

2. **Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?**

Response: Should any case come before me concerning unenumerated rights in the Constitution, either a right that has been identified by the Supreme Court or one that a party contends should be identified, I would follow the test set forth in *Washington v. Glucksberg*, 521 U.S. 702 (1997). Under that test, "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' *id.* at 503 (plurality opinion); *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) ('so rooted in the traditions and conscience of our people as to be ranked as fundamental'), and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed,' *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937)." *Washington*, 521 U.S. at 720-21.

3. **How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

Response: The role of an Article III judge is to fairly and impartially resolve the case or controversy before her. I would approach each case cognizant of the limits on judicial power, with an open mind, and with humility. In every case, I would consult the relevant precedent from the Supreme Court and First Circuit. I would carefully review the factual record, the parties' written submissions, and the parties' arguments. I would engage with the parties respectfully and work diligently to determine how the law applies to the facts of the case. In writing decisions, I would strive to explain my reasoning clearly, so that the parties and the public understand why the law requires a particular outcome.

Although I am not familiar with the judicial philosophies of all of the Justices on the Warren, Burger, Rehnquist, and Roberts Courts, I had the great fortune to serve as a law clerk to Justice Ruth Bader Ginsburg from 2012 to 2013. During that year, I admired how the Justices on the Court engaged with their colleagues respectfully and worked every day to uphold the rule of law. I would strive to bring those attributes to my work as a judge.

4. **Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an 'originalist'?**

Response: Black's Law Dictionary defines "originalism" as the "theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and adopted it." Black's Law Dictionary 1210 (9th ed. 2004). I would not characterize my approach to

constitutional interpretation with any particular label. Should a matter of constitutional interpretation come before me, I would research and apply relevant Supreme Court and First Circuit precedent. For some constitutional provisions—for example, the Establishment Clause of the First Amendment, the Second Amendment, and the Confrontation Clause of the Sixth Amendment—the Supreme Court has instructed courts to examine the original public meaning of the provision. *See, e.g.*, *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407, 2428 (2022) (Establishment Clause); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2127 (2022) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 43 (2004) (Confrontation Clause). I would adhere to the test and methodology prescribed by the Supreme Court and First Circuit for each constitutional provision.

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?**

Response: I generally understand "living constitutionalism" to refer to idea that the meaning of the Constitution can change over time, absent amendment through the process prescribed by Article V. I would not characterize my approach to constitutional interpretation with any particular label. The Supreme Court has long affirmed that the Constitution was "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819) (emphasis removed). The Court has accordingly adopted different tests to apply the Constitution's provisions to modern-day facts and circumstances. If confirmed, in assessing any constitutional claim that might come before me, I would adhere to Supreme Court and First Circuit precedent on the constitutional provision at issue, including the precedent on the methodology of constitutional interpretation.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: If a constitutional issue of first impression were to come before me, and if there were no Supreme Court or First Circuit precedent on point, I would begin by examining the text of the constitutional provision. I would also seek guidance from Supreme Court and First Circuit precedent construing the particular constitutional provision in related contexts or construing analogous constitutional provisions. In some circumstances, the Supreme Court has looked to the original public meaning of the constitutional provision. *See, e.g.*, *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407, 2428 (2022) (Establishment Clause); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2127 (2022) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 43 (2004) (Confrontation Clause). In other circumstances, the Supreme Court has looked to "evolving standards of decency," *Graham v. Florida*, 560 U.S. 48, 58 (2010) (Eighth Amendment), or "contemporary community standards," *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 574 (2002) (First Amendment), to inform the constitutional analysis. In all cases, I would strive to decide the matter using a methodology consistent with Supreme Court and First Circuit precedent.

7. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: Yes. The Supreme Court has held that for some constitutional provisions, the public's current understanding is a relevant consideration. For example, the Supreme Court has looked to "evolving standards of decency that mark the progress of a maturing society" in assessing whether a form of punishment is "cruel and unusual" under the Eighth Amendment, *Graham v. Florida*, 560 U.S. 48, 58 (2010), and to "contemporary community standards" in determining whether speech is obscene and therefore outside the purview of the First Amendment, *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 574 (2002). If confirmed, I would fully and faithfully adhere to Supreme Court and First Circuit precedent in all cases, including the methodological approach prescribed by that precedent.

8. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: The Constitution is a written document whose text does not change unless it is amended in accordance with the procedures set forth in Article V. The Supreme Court has long affirmed that the Constitution was "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819) (emphasis removed). The Court has accordingly adopted different tests to apply the Constitution's provisions to modern-day facts and circumstances. If confirmed, in assessing any constitutional claim that might come before me, I would adhere to Supreme Court and First Circuit precedent on the constitutional provision at issue.

9. **Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?**

   a. **Was it correctly decided?**

   Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* is binding precedent, and I would apply it fully and faithfully.

10. **Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

   a. **Was it correctly decided?**

   Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. The Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen* is binding precedent, and I would apply it fully and faithfully.

11. **Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?**

    a. **Was it correctly decided?**

    Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. That said, because the constitutionality of *de jure* racial segregation in public schools is one of the very few issues not likely to be relitigated, I am comfortable stating that I believe *Brown v. Board of Education* was correctly decided.

12. **What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: Congress created a rebuttable presumption in favor of pretrial detention for persons with certain prior convictions, including convictions for certain crimes of violence, crimes for which the maximum penalty is life imprisonment, and other specified offenses. *See* 18 U.S.C. § 3142(e)(2). Congress also created a rebuttable presumption in favor of pretrial detention when the judge finds that there is probable cause to believe that the person committed certain drug offenses for which the maximum penalty is ten years or more, certain firearms offenses, certain offenses involving minor victims, offenses involving slavery and human trafficking, and other specified offenses. *See id.* § 3142(e)(3).

    a. **What are the policy rationales underlying such a presumption?**

    Response: I am not aware of Supreme Court or First Circuit precedent explaining the policy rationale for the rebuttable presumptions created by 18 U.S.C. § 3142(e). If confirmed, I would apply the statute as written and would adhere to any relevant Supreme Court or First Circuit precedent.

13. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: Yes. The Free Exercise Clause of the First Amendment protects against discrimination on the basis of religion, and it limits what the government may impose on, or require of, private institutions and small businesses operated by observant owners. Unless government action that burdens religion is "neutral and of general applicability," the government must establish that its law or policy advances a compelling government interest and is narrowly tailored to that interest. *See, e.g.*, *Tandon v. Newsom*, 141 S. Ct. 1294, 1296-97 (2021) (per curiam); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 546 (1993). Only if the law or policy survives that "most rigorous of scrutiny" is the action constitutional. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546.

In addition, the Supreme Court has held that the Religious Freedom Restoration Act protects the religious exercise of religious organizations and small businesses operated by observant owners. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719 (2014). Under that Act, the federal government may not "substantially burden a person's exercise of religion" unless it can demonstrate that the substantial burden furthers a compelling government interest through the least restrictive means. 42 U.S.C. § 2000bb-1.

14. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: Please see my response to Question 13.

15. **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 religious-entity applicants in *Roman Catholic Diocese* were entitled to a preliminary injunction of the executive order pending appeal and disposition of any petition for a writ of certiorari, because they established a likelihood of success on the merits on their Free Exercise claim, they demonstrated that they would suffer irreparable harm absent injunctive relief, and they demonstrated that the public interest would not be harmed if injunctive relief were awarded. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (per curiam). With respect to the likelihood of success on the merits, the Court first concluded that the challenged capacity restrictions were likely not neutral because they "single[d] out houses of worship for especially harsh treatment." *Id. at* 66. And because the restrictions were not neutral and of general applicability, they were subject to strict scrutiny. *Id.* at 67. The Court held that the capacity restrictions were not likely to survive that rigorous standard of review because there were less restrictive alternative policies available that could have prevented the spread of COVID-19. *Id.*

16. **Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom.***

Response: In *Tandon v. Newsom*, the Supreme Court granted the application for injunctive relief pending appeal or disposition of any petition for a writ of certiorari. 141 S. Ct. 1294 (2021) (per curiam). The Court enjoined state restrictions imposed on private gatherings during the COVID-19 pandemic, concluding that the restrictions were not neutral and generally applicable because they treated comparable secular activity more favorably than at-home religious gatherings, and therefore triggered strict scrutiny under the Free Exercise Clause. *Id.* at 1296-97. The Court held that the applicants were likely to succeed on the merits of their Free Exercise claim and that the other equitable factors warranted an injunction pending appeal. *Id.* at 1297.

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

Response: Yes.

18. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.***

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, the Supreme Court considered whether the Colorado Civil Rights Commission's application of

the Colorado Anti-Discrimination Act to a bakery comported with the Free Exercise Clause of the First Amendment. 138 S. Ct. 1719 (2018). The Colorado Civil Rights Commission had determined that the refusal of the petitioner, a bakery business, to provide wedding cakes to same-sex couples on the basis of religious beliefs violated the Act, which prohibits discrimination in places of public accommodation on the basis of protected characteristics, including sexual orientation. *Id.* at 1726. The Supreme Court held that the Colorado Civil Rights Commission's consideration of the case exhibited hostility to religion and therefore violated the state's duty under the Free Exercise Clause "not to base laws or regulations on hostility to a religion or religious viewpoint." *Id.* at 1731.

19. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: The Supreme Court has explained that "'religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.'" *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)). So long as a person's religious beliefs are sincere, they are protected, even if those beliefs are not based on teachings of the faith tradition to which they belong. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 686 (2014); *Frazee v. Illinois Dep't of Employment Security*, 489 U.S. 829, 834 (1989).

a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Please see my response to Question 19.

b. **Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: Please see my response to Question 19.

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: I am not familiar with the official positions of the Catholic Church, nor, as a judicial nominee, would it be appropriate for me to comment on the positions of a religious institution.

20. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: *Our Lady of Guadalupe School v. Morrissey-Berru* concerned the ministerial exception, rooted in the Free Exercise and Establishment Clauses of the First Amendment, to laws governing the employment relationship between certain employees and religious institutions. 140 S. Ct. 2049, 2055 (2020). To determine whether the ministerial exception applies to an employment discrimination claim brought by an employee of a religious institution, the Court explained, "a variety of factors may be important." *Id.* at 2063. Those factors may include the employee's title, the role of the employee in elucidating tenets of

the faith, and the substance of the employee's work. *Id.* at 2064 ("What matters, at bottom, is what an employee does."). Applying those factors to the cases at hand, the Supreme Court concluded that the employees, both elementary school teachers at Catholic schools, "performed vital religious duties," and therefore could not assert employment discrimination claims against their religious employers. *Id.* at 2066-69.

21. **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*, the City of Philadelphia had stopped referring children to Catholic Social Services, a private foster care agency, because, due to its religious beliefs about same-sex marriage, the agency would not certify same-sex couples to be foster parents. 141 S. Ct. 1868, 1874 (2021). Catholic Social Services brought suit, contending that the City's policy violated its rights under the Free Exercise Clause. *Id.* at 1876. The Supreme Court held that the City's refusal to contract with Catholic Social Services burdened the organization's religious beliefs and did not constitute a generally applicable policy. *Id.* at 1878-81. The policy was, therefore, subject to strict scrutiny, and it failed that rigorous standard of review because the City's asserted governmental interests could not justify denying Catholic Social Services an exemption from the City's non-discrimination policies. *Id.* at 1882.

22. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Carson v. Makin*, the Supreme Court held that Maine's tuition assistance program, under which parents living in districts without a public high school could direct state-funded subsidies to secular private schools, but not to religious private schools, violated the Free Exercise Clause of the First Amendment. 142 S. Ct. 1987 (2022). The Court reaffirmed the principle that "a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits." *Id.* at 1996. And it held that Maine's tuition assistance program, which disqualified private schools based on their religious character, ran afoul of that principle and could not satisfy strict scrutiny. *Id.* at 1997-98.

23. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: After the plaintiff in *Kennedy v. Bremerton School District*, a high school football coach employed by a public school district, prayed quietly after three football games, the school district put him on paid administrative leave and barred him from further participation in football activities. 142 S. Ct. 2407, 2418-19 (2022). The plaintiff contended that the school district's action violated his rights under the Free Speech and Free Exercise Clauses of the First Amendment. *Id.* at 2419. The Supreme Court agreed. It first concluded, for purposes of the Free Exercise claim, that the school district's action was not in accordance with a neutral or generally applicable policy because it targeted the plaintiff's conduct based on its religious character. *Id.* at 2422-23. It next concluded, for purposes of the free speech claim, that the plaintiff's prayers constituted private speech, not speech

attributable to the government. *Id.* at 2424-25. The Court thus applied heightened scrutiny to both claims. *Id.* at 2526. Rejecting the school district's argument that its discipline of the plaintiff was necessary to avoid an Establishment Clause violation, the Court held that the school district had failed to meet its burden to justify infringement of the plaintiff's First Amendment rights. *Id.* at 2432.

24. **Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court granted the petition for a writ of certiorari, vacated the judgment, and remanded for further consideration in light of *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). Justice Gorsuch's concurrence expressed his view that the lower courts had not properly applied the strict scrutiny test required by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(a). *See Mast*, 141 S. Ct. at 2432-34 (Gorsuch, J., concurring). In particular, he argued that the lower courts had not given proper weight to alternatives to requiring the Amish petitioners to install modern-day septic systems on their farms. *Id.* at 2433.

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: Consistent with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to comment on how to interpret a statute that might come before me in litigation. If confirmed, I would fully and faithfully apply all relevant Supreme Court and First Circuit precedent concerning 18 U.S.C. § 1507, including the Supreme Court's decision in *Cox v. Louisiana*, 379 U.S. 559 (1965).

26. **Would it be appropriate for the court to provide its employees trainings which include the following:**

a. **One race or sex is inherently superior to another race or sex;**

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response to all subparts: I am not familiar with the trainings conducted by the First Circuit, the District of Massachusetts, or the U.S. Judicial Conference, and I do not think it appropriate for me to comment, in the abstract, on what might be covered in any particular training. If confirmed, and if I am involved in planning any court trainings, I commit that the trainings will comply with applicable law and regulations.

27. **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 conducted by the First Circuit or the District of Massachusetts, and I do not know whether I will be involved in planning any such trainings. But if I am involved, I commit that the trainings will comply with any applicable law and regulations.

28. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?**

Response: Yes.

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

Response: The Constitution authorizes the President to make political appointments. U.S. Const., art. II, § 2, cl. 2. I am not aware of any Supreme Court or First Circuit precedent concerning the factors that the President may or may not consider when making such appointments. If confirmed, I would adhere to any binding precedent from the Supreme Court or First Circuit on this question.

30. **Is the criminal justice system systemically racist?**

Response: Whether the criminal justice system is systemically racist is an important question for policy makers. If confirmed as a judge, my charge would be to impartially handle the individual cases that come before me in accordance with the law. In my courtroom, everyone would be treated equally and fairly, regardless of their race.

31. **President Biden has created a commission to advise him on reforming the U.S. Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: The question whether the Supreme Court should be expanded or contracted is a question for policy makers. It would not be appropriate for me, as a judicial nominee, to comment on the size of the Supreme Court. If I were confirmed, I would be bound by Supreme Court precedent, and I would fully and faithfully apply that precedent.

32. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No.

33. **What do you understand to be the original public meaning of the Second Amendment?**

Response: The Supreme Court described in detail the original public meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). If confirmed, I would adhere to those decisions and any other Supreme Court and First Circuit precedent on the Second Amendment.

34. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court clarified the methodology applicable to the review of any Second Amendment claim. First, a court must assess whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 2126. If so, "the Constitution presumptively protects that conduct." *Id.* The government then bears the burden of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearms regulation." *Id.* To make that showing, the government must identify an historical analogue that is "relevantly similar" to the challenged regulation. *Id.* at 2132. If confirmed, I would apply this methodology in any Second Amendment case.

The Court's decisions in *Bruen*, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), also invalidated certain restrictions on the right to keep and bear arms. In *Heller* and *McDonald*, the Court held that the government may not prohibit law-abiding, responsible citizens from possessing firearms for self-defense within their homes. In *Bruen*, the Court held that the Second Amendment applies outside the home, and that New York's "proper purpose" licensing provision was incompatible with the Second Amendment. If confirmed, I would fully and faithfully apply these holdings.

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

Response: The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment protects an individual right to keep and bear arms.

36. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: No. As the Supreme Court stated in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Second Amendment "standard accords with how we protect other constitutional rights." 142 S. Ct. 2111, 2130 (2022).

37. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: No. As the Supreme Court stated in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Second Amendment "standard accords with how we protect other constitutional rights." 142 S. Ct. 2111, 2130 (2022).

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

Response: If confirmed, I would fully and faithfully apply any Supreme Court or First Circuit precedent on this question. In general, Article II of the Constitution establishes the executive branch of government and outlines the duties and responsibilities of the President. The Supreme Court has explained that "because it would be 'impossib[le]' for 'one man' to 'perform all the great business of the State,' the Constitution assumes that lesser executive

officers will 'assist the supreme Magistrate in discharging the duties of his trust.'" *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2197 (2020) (quoting 30 Writings of George Washington 334 (J. Fitzpatrick ed. 1939)). The Court has also "recognized on several occasions over many years that an agency's decision not to prosecute or enforce [federal law], whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

39. **Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.**

Response: Black's Law Dictionary defines "prosecutorial discretion" as a "prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." Black's Law Dictionary 534 (9th ed. 2004). As a general matter, I understand a substantive administrative rule as one that has the force and effect of law, and as distinct from interpretive rules, which "merely 'advise the public of the agency's construction of the statutes and rules which it administers.'" *Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1811 (2019) (quoting *Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1204 (2015)). Insofar as this question is asking whether the administrative law distinction between substantive and interpretive rules has bearing on the scope of prosecutorial discretion, it would be inappropriate for me to comment, but I would adhere to any Supreme Court and First Circuit precedent on that topic.

40. **Does the President have the authority to abolish the death penalty?**

Response: By statute, Congress has authorized the death penalty for certain offenses, *see* 18 U.S.C. § 3591, and has prescribed procedures that must be observed and factors that must be considered before a sentence of death is imposed, *id.* §§ 3592–3594. The President cannot unilaterally change statutes; it would require an act of Congress to alter the framework set forth in the Federal Death Penalty Act.

41. **Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS.***

Response: This case concerned a nationwide moratorium on evictions promulgated by the Centers for Disease Control and Prevention ("CDC") during the COVID-19 pandemic. *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2486 (2021) (per curiam). The District Court had stayed its judgment vacating the moratorium pending appeal. *Id.* The Supreme Court granted the application to vacate the stay, concluding that the applicants were likely to succeed on the merits of their claim that the moratorium exceeded the authority delegated to the CDC under 42 U.S.C. § 264(a), and that the equities of the case counseled in favor of vacating the stay. *Id.* at 2488-89. The Court emphasized that it "expect[s] Congress to speak clearly when authorizing an agency to exercise powers of 'vast economic and political significance.'" *Id.* at 2489 (quoting *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014)).

42. **You authored an amicus brief in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania.* In that brief, you argued allowing any exemptions to the Affordable Care Act's contraception mandate flouted the intent of the law. Yet the Supreme Court ruled 7-2 in favor of the Little Sisters of the Poor, allowing them to continue serving the elderly**

poor and dying without threat of millions of dollars in fines.

a. **Do religious people have to choose between engaging in public life or their sincerely held religious beliefs?**

Response: The Supreme Court held in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), that the religious and moral exemption rules promulgated by the federal agencies were within the scope of the agencies' authority under the Affordable Care Act, 42 U.S.C. § 300gg-13(a)(4), and that the rules comported with the procedural requirements of the Administrative Procedure Act. If confirmed, I would fully and faithfully apply the Court's decision and holding in *Little Sisters*.

b. **Justice Alito concurred and explained his view that the Religious Freedom Restoration Act compels an exemption to those who otherwise would be forced to violate a sincerely held religious belief. Do you agree with him?**

Response: The Religious Freedom Restoration Act prohibits the federal government from "substantially burden[ing] a person's exercise of religion" unless it can demonstrate that the substantial burden furthers a compelling government interest through the least restrictive means. 42 U.S.C. § 2000bb-1. I am aware that the issue addressed in this question is being litigated in the courts, so I do not believe it appropriate for me to comment on it. If confirmed, I would adhere to all Supreme Court and First Circuit precedent on the Religious Freedom Restoration Act, including, for example, the Supreme Court's decision *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

c. **If no, then what does the Religious Freedom Restoration Act protect if not sincerely held religious beliefs?**

Response: Please see my response to Question 42(b).

43. **In *Caetano v. Commonwealth of Massachusetts*, you argued in your Brief in Opposition on petition for writ of certiorari to the Supreme Court that stun guns do not qualify for Second Amendment protection. You argued that stun guns were too "modern" to qualify for Second Amendment protection because stun guns were not commonly used when the Second Amendment was ratified.**

a. **Was Justice Alito correct when he pointed out that the Supreme Court addressed your argument in *Heller* and determined it to be bordering on frivolous?**

Response: Respectfully, I would like to clarify the posture of this case before the U.S. Supreme Court and my involvement in the case. Justice Alito's concurrence described the Massachusetts Supreme Judicial Court's statement that "a stun gun 'is not the type of weapon that is eligible for Second Amendment protection' because it was 'not in common use at the time of [the Second Amendment's] enactment'" as inconsistent with *Heller*, which had "rejected as 'bordering on the frivolous' the argument 'that only those arms in existence in the 18th century are protected by the Second Amendment.'" *Caetano v. Massachusetts*, 577 U.S. 411, 414 (2016) (per curiam) (Alito, J., concurring in the judgment) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008), and *Commonwealth v. Caetano*, 470 Mass. 774, 781, 26 N.E.3d 688, 693

(2015)).

I was not counsel for the Commonwealth when the case was briefed and argued in the Massachusetts Supreme Judicial Court, and I did not advance the argument adopted by that Court. When the defendant filed a petition for a writ of certiorari with the U.S. Supreme Court, the Attorney General's Office took over from the Middlesex District Attorney's Office representation for the Commonwealth, and I was assigned to co-author the brief in opposition. In arguing that the Supreme Court should deny the petition, the brief in opposition contended that "[t]he Second Amendment is not limited to the precise models of weaponry in existence at the time of the founding, but neither does it protect novel weapons or weapons with features that bear scant resemblance to weapons that were common at the time of ratification." Brief in Opposition at 8. And it contended that stun guns "are a wholly distinct sort of weapon, one that has no 18th-century analogues." *Id.* at 9. Without referencing that argument, the U.S. Supreme Court summarily reversed the Massachusetts Supreme Judicial Court's decision, explaining that the lower court's reasoning was inconsistent with *Heller*. *Caetano*, 577 U.S. at 411-12.

If confirmed, and should any case concerning the Second Amendment come before me, I would adhere fully and faithfully to the binding precedent of the Supreme Court and the First Circuit. In particular, in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court clarified the methodology applicable to the review of any Second Amendment claim. First, a court must assess whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 2126. If so, "the Constitution presumptively protects that conduct." *Id.* The government then bears the burden of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearms regulation." *Id.* To make that showing, the government must identify an historical analogue that is "relevantly similar" to the challenged regulation. *Id.* at 2132.

b. **Is the Second Amendment a "second class right"?**

Response: No.

44. **During the pandemic, Governor Charlie Baker deemed gun stores "nonessential." You defended Governor Baker's order by stating, "Closure of some of these institutions, like bookstores and schools, may implicate constitutional rights, but the health and welfare of the Massachusetts citizenry depend on these temporary closures."**

a. **Do American citizens lose protection of their constitutional rights during a pandemic?**

Response: No.

b. **What constitutional rights may the government violate or implicate during a pandemic?**

Response: In accordance with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to comment in the abstract on this question. Should any case come before me concerning the lawfulness of pandemic-related policies, I would impartially and faithfully apply all relevant Supreme Court and First Circuit precedent, including the Supreme Court's decisions in *Tandon v.*

Newsom, 141 S. Ct. 1294 (2021) (per curiam), and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (per curiam), and the First Circuit's decision in *Bayley's Campground, Inc. v. Mills*, 985 F.3d 153 (1st Cir. 2021). In any case concerning Second Amendment rights, I would likewise impartially and faithfully apply all relevant Supreme Court and First Circuit precedent, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *Caetano v. Massachusetts*, 577 U.S. 411 (2016), and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

c. **Does the health and welfare of citizenry override the First Amendment during a pandemic?**

Response: Please see my response to Question 44(b).

d. **Does the health and welfare of citizenry override the Second Amendment during a pandemic?**

Response: Please see my response to Question 44(b).

45. **According to your SJQ, you served for a year on the Government Bureau's Racial Equity Working Group.**

a. **What is racial equity?**

Response: I am not aware of a consensus definition for this term. Black's Law Dictionary defines "equity" as "fairness; impartiality; even-handed dealing." Black's Law Dictionary 619 (9th ed. 2004). Racial equity would include fair, impartial, and even-handed treatment of people of all races.

b. **What role do courts have in racial equity?**

Response: Questions concerning the fair, impartial, and even-handed treatment of people of all races are important matters for policy makers and legislatures. The role of a court, however, is to fairly and impartially adjudicate individual cases, with individual litigants and individual claims and defenses, in accordance with the law and with binding precedent. If confirmed, I commit to discharging that duty to the best of my abilities, and to treating everyone of all races equally and fairly.

c. **How do we measure racial equity?**

Response: How racial equity should be measured is an important question for policy makers. If confirmed as a judge, my charge would be to impartially handle the individual cases that come before me in accordance with the law. In my courtroom, everyone of all races would be treated equally and fairly.

d. **How would we determine the end of measures for racial equity?**

Response: This is an important question for policy makers. If confirmed as a judge, my charge would be to impartially handle the individual cases that come before me in accordance with the law. In my courtroom, everyone of all races would be treated equally and fairly.

e. **Would it be complete equality of outcome among all racial groups?**

Response: This is an important question for policy makers. If confirmed as a judge, my charge would be to impartially handle the individual cases that come before me in accordance with the law. In my courtroom, everyone of all races would be treated equally and fairly.

Senator Ben Sasse
Questions for the Record for Julia E. Kobick
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
November 30, 2022

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

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

   Response: The role of an Article III judge is to fairly and impartially resolve the case or controversy before her. I would approach each case cognizant of the limits on judicial power, with an open mind, and with humility. In every case, I would consult the relevant precedent from the Supreme Court and First Circuit. I would carefully review the factual record, the parties' written submissions, and the parties' arguments. I would engage with the parties respectfully and work diligently to determine how the law applies to the facts of the case. In writing decisions, I would strive to explain my reasoning clearly, so that the parties and the public understand why the law requires a particular outcome.

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

   Response: I would not characterize my approach to constitutional interpretation with any particular label. Should a matter of constitutional interpretation come before me, I would research and apply relevant Supreme Court and First Circuit precedent. For some constitutional provisions—for example, the Establishment Clause of the First Amendment, the Second Amendment, and the Confrontation Clause of the Sixth Amendment—the Supreme Court has instructed courts to examine the original public meaning of the provision. *See, e.g.*, *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407, 2428 (2022) (Establishment Clause); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2127 (2022) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 43 (2004) (Confrontation Clause). I would adhere to the test and methodology prescribed by the Supreme Court and First Circuit for each constitutional provision.

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

   Response: I would not characterize my approach to constitutional and statutory interpretation with any particular label. In any case of constitutional or statutory construction, I would begin by researching whether the Supreme Court or First Circuit has construed the provision at issue and, if so, I would adhere to that construction. Absent binding precedent, I would begin by examining the text of the provision. If the meaning of the provision is clear, I would apply it as written. *See, e.g.*, *Hardt v. Reliance Standard*

Life Ins. Co., 560 U.S. 242, 251 (2010) (in any statutory interpretation case, "we begin by analyzing the statutory language" and "must enforce plain and unambiguous statutory language according to its terms").

5. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

Response: The Constitution is a written document whose text does not change unless it is amended in accordance with the procedures set forth in Article V. The Supreme Court has long affirmed that the Constitution was "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819) (emphasis removed). The Court has accordingly adopted different tests to apply the Constitution's provisions to modern-day facts and circumstances. If confirmed, in assessing any constitutional claim that might come before me, I would adhere to Supreme Court and First Circuit precedent on the constitutional provision at issue.

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

Response: I admire many of the Justices on the Supreme Court and have learned much from observing the care and seriousness of purpose that they bring to each case. Although I do not expect that my approach would mirror the jurisprudence of any one Supreme Court Justice, I had the great fortune to serve as a law clerk to Justice Ruth Bader Ginsburg from 2012 to 2013. During that year, I admired how the Justices on the Court engaged with their colleagues respectfully and worked every day to uphold the rule of law. I would strive to bring those attributes to my work as a judge.

7. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?**

Response: Under the "law of the circuit rule," once a court of appeals has decided a legal issue in a panel decision, that "ruling usually binds later panels too—even where the succeeding panel disagrees with the prior one." *United States v. Guerrero*, 19 F.4th 547, 552 (1st Cir. 2021). An exception to that rule exists when the prior panel decision has been overruled by the Supreme Court, by an en banc decision of the court, or by a legislative enactment. *Id.* The court of appeals may also overrule its precedent "when Supreme Court precedent 'that postdates the original decision, although not directly controlling,' provides a clear and convincing basis to believe that the earlier panel would have decided the issue differently." *Id.* at 552-53 (quoting *San Juan Cable LLC v. P.R. Tel. Co.*, 612 F.3d 25, 33 (1st Cir. 2010)).

8. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?**

Response: Please see my response to Question 7.

9. What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Response: In any case of statutory construction, I would begin by researching whether the Supreme Court or First Circuit has construed the statute and, if so, I would adhere to that construction. Absent binding precedent, I would begin by examining the text of the statute. *See Ross v. Blake*, 578 U.S. 632, 638 (2016) ("Statutory interpretation, as we always say, begins with the text."). If the meaning of the statute is clear, I would apply it as written. If the statute is ambiguous, I would consider pertinent canons of statutory construction, look to the overall structure of the statute and any related provisions, and consult legislative history to resolve the ambiguity. *See, e.g.*, *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011).

10. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: In sentencing a defendant, I would apply the factors set forth in 18 U.S.C. § 3553(a) and consult the Sentencing Guidelines. One factor a judge must consider in imposing sentence is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). The Sentencing Guidelines also instruct that a defendant's race and national origin "are not relevant in the determination of a sentence." U.S. Sentencing Guidelines Manual § 5H1.10 (policy statement) (2021).

Senator Josh Hawley
Questions for the Record

Julia Kobick
Nominee, District of Massachusetts

1. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

    a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

    b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

    c. **The enhancement for offenses involving the use of a computer**

    d. **The enhancements for the number of images involved**

    Response to all subparts: The Supreme Court has held that the Sentencing Guidelines are advisory rather than mandatory, *United States v. Booker*, 543 U.S. 220, 245 (2005), but must be calculated and considered before imposing a sentence, *Molina-Martinez v. United States*, 578 U.S. 189, 193 (2016). Because each defendant's case must be considered individually, it would be inappropriate to comment on whether particular sentencing enhancements should or should not apply in the abstract. If confirmed, I would apply the factors set forth in 18 U.S.C. § 3553(a) and carefully consider the Sentencing Guidelines before sentencing any defendant.

2. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

    a. **Do you agree that the penalties should be aligned?**

    Response: The question whether penalties for distribution, receipt, and possession of child pornography should be aligned is a question for policy makers. Consistent with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on that question. If confirmed, I would apply the relevant statutes and the factors set forth in 18 U.S.C. § 3553(a) in sentencing any defendant convicted of child pornography offenses.

b. If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?

Response: Please see my response to Question 2(a).

c. If an offender before you is charged only with possession even though uncontested evidence shows the offender also committed the crime of receiving child pornography, will you aim to sentence the offender to between 5 and 10 years?

Response: Because each defendant's case must be considered individually, it would be inappropriate to comment on how, in the abstract, I might sentence any particular defendant. If confirmed, I would apply the factors set forth in 18 U.S.C. § 3553(a) and carefully consider the Sentencing Guidelines before sentencing any defendant.

3. 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 the context for that quotation. I believe that a judge has a duty to set aside any personal views she may hold, approach each case from a position of neutrality, and fairly and impartially apply the law to the circumstances of each case.

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 3(a).

4. Do you believe that the Supreme Court's ruling in *Dobbs* v. *Jackson Women's Health Organization* is settled law?

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* is binding precedent, and I would apply it fully and faithfully.

5. What is the standard for each kind of abstention in the court to which you have been nominated?

Response: There are multiple abstention doctrines recognized by the Supreme Court and the First Circuit. While I describe below those doctrines that I understand to be most commonly invoked, I would, if confirmed, adhere to Supreme Court and First Circuit precedent on any question of abstention that might come before me.

Under the *Younger* abstention doctrine, "federal courts should refrain from issuing injunctions that interfere with ongoing state-court litigation, or, in some cases, with state administrative proceedings." *Maymo-Melendez v. Alvarez-Ramirez*, 364 F.3d 27, 31 (1st Cir. 2004). While this doctrine "initially applied to protect state criminal prosecutions against interference," it "has been extended to 'coercive' civil cases involving the state and to comparable state administrative proceedings that are quasi-judicial in character and implicate important state interests." *Id.*

Under the *Pullman* abstention doctrine, "declining to exercise jurisdiction is warranted where (1) substantial uncertainty exists over the meaning of the state law in question, and (2) settling the question of state law will or may well obviate the need to resolve a significant federal constitutional question." *Batterman v. Leahy*, 544 F.3d 370, 373 (1st Cir. 2008).

Under the *Colorado River* abstention doctrine, "the pendency of a similar action in state court may merit federal abstention based on 'considerations of wise judicial administration' that counsel against duplicative lawsuits." *Jimenez v. Rodriguez-Pagan*, 597 F.3d 18, 27 (1st Cir. 2010) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). The First Circuit applies a "non-exclusive list of factors" to determine whether abstention is appropriate. *Id.* Those factors include: "(1) whether either court has assumed jurisdiction over a res; (2) the [geographical] inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether state or federal law controls; (6) the adequacy of the state forum to protect the parties' interests; (7) the vexatious or contrived nature of the federal claim; and (8) respect for the principles underlying removal jurisdiction." *Id.* at 27-28 (citing *Rio Grande Cmty. Health Ctr. v. Rullan*, 397 F.3d 56, 71-72 (1st Cir. 2005)).

The *Burford* abstention doctrine "counsels abstention in situations where a federal suit will interfere with a state administrative agency's resolution of difficult and consequential questions of state law or policy." *Chico Serv. Station, Inc. v. Sol Puerto Rico Ltd.*, 633 F.3d 20, 26 n.9 (1st Cir. 2011) (citing *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 361 (1989)).

The *Thibodaux* abstention doctrine may apply in "cases raising issues 'intimately involved with [the States'] sovereign prerogative,' the proper adjudication of which might be impaired by unsettled questions of state law." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 717 (1996) (quoting *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 28 (1959)).

Finally, under the *Rooker-Feldman* doctrine, "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006). The doctrine "is confined to 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).

6. **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: In my capacity as Assistant Attorney General, I co-authored two amicus briefs on behalf of Massachusetts and other states in *DeOtte v. Azar*, 393 F. Supp. 3d 490 (N.D. Tex. 2019), *vacated and remanded*, *DeOtte v. Nevada*, 20 F.4th 1055 (5th Cir. 2021), a case alleging that the contraceptive mandate of the Affordable Care Act infringed the rights of a class of employers under the Religious Freedom Restoration Act. The amicus briefs supported the state of Nevada's motion to intervene in the case.

7. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

Response: Should a matter of constitutional interpretation come before me, I would research and apply relevant Supreme Court and First Circuit precedent. For some constitutional provisions—for example, the Establishment Clause of the First Amendment, the Second Amendment, and the Confrontation Clause of the Sixth Amendment—the Supreme Court has instructed courts to examine the original public meaning of the provision. *See, e.g.*, *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407, 2428 (2022) (Establishment Clause); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2127 (2022) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 43 (2004) (Confrontation Clause). I would adhere to the test and methodology prescribed by the Supreme Court and First Circuit for each constitutional provision.

8. **Do you consider legislative history when interpreting legal texts?**

Response: In any case of statutory construction, I would begin by researching whether the Supreme Court or First Circuit has construed the statute and, if so, I would adhere to that construction. Absent binding precedent, I would begin by examining the text of the statute. *See Ross v. Blake*, 578 U.S. 632, 638 (2016) ("Statutory interpretation, as we always say, begins with the text."). If the meaning of the statute is clear, I would apply it as written. If the statute is ambiguous, I would consider pertinent canons of statutory construction, look to the overall structure of the statute and any related provisions, and consult legislative history to resolve the ambiguity. *See, e.g.*, *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011).

    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: Some forms of legislative history are more probative than others. For example, the Supreme Court has explained that while pre-enactment legislative history is "persuasive to some because it is thought to shed light on what legislators understood an ambiguous statutory text to mean when they voted to enact it," *Bruesewitz v. Wyeth LLC*, 562 U.S. 223 242 (2011), post-enactment legislative history has "scant" probative value, *Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 298 (2010).

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 Supreme Court often consults English common law when interpreting provisions of the U.S. Constitution. *See, e.g.*, *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2249-51 (2022); *District of Columbia v. Heller*, 554 U.S. 570, 592-93 (2008). Otherwise, because the Constitution is a domestic document, the law of foreign nations generally has no bearing on its construction. If confirmed, I would look to Supreme Court and First Circuit precedent in any case of constitutional interpretation.

9. 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: To prevail on a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment, a death row inmate must "establish that the State's method of execution presents a 'substantial risk of serious harm'—severe pain over and above death itself," and "'identify an alternative [method] that is feasible, readily implemented, and in fact significantly reduce[s]' the risk of harm involved." *Nance v. Ward*, 142 S. Ct. 2214, 2220 (2022) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)).

10. 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.

11. 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: To the best of my knowledge, no.

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.

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 facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: The Free Exercise Clause of the First Amendment protects against discrimination on the basis of religion. Unless government action that burdens religion is "neutral and of general applicability," the government must establish that its law or policy advances a compelling government interest and is narrowly tailored to that interest. *See, e.g.*, *Tandon v. Newsom*, 141 S. Ct. 1294, 1296-97 (2021) (per curiam); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877-78 (2021); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 546 (1993). Only if the law or policy survives that "most rigorous of scrutiny" is the action constitutional. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546.

14. 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 13. In addition, the Religious Land Use and Institutionalized Persons Act limits the ability of state governments to impose certain land use regulations in "a manner that imposes a substantial burden on the religious exercise of a person," or to "impose a substantial burden on the religious exercise of a person residing in or confined to an institution," unless the government can demonstrate that its regulation furthers a compelling interest through the least restrictive means. 42 U.S.C. §§ 2000cc(a), 2000cc-1(a); *see Cutter v. Wilkinson*, 544 U.S. 709, 715-16 (2005).

15. 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 evaluating whether a person's religious beliefs are held sincerely, a court's "'narrow function . . . is to determine' whether the [person's] asserted religious belief reflects 'an honest conviction.'" *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 686 (2014) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 716 (1981)). "It is not for the Court to say that the religious beliefs of the plaintiffs are

mistaken or unreasonable." *Id.*

16. 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: The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment protects an individual right to keep and bear arms, and that the government may not prohibit law-abiding, responsible citizens from possessing firearms for self-defense within their homes.

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.

17. 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 understand Justice Holmes to have made that statement in support of his broader point that the "Constitution is not intended to embody a particular economic theory," and that constitutional interpretation should not depend on individual justices' economic policy preferences. *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting).

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, but I understand *Lochner*'s holding and reasoning to have been repudiated by the Supreme Court in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), and subsequent cases.

18. 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: If confirmed, I would be bound to faithfully apply all Supreme Court precedent that has not been formally overruled or expressly repudiated by the Court.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: Yes.

19. 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 do not have a view on the quotation from Judge Learned Hand. If confirmed, I would adhere to all Supreme Court and First Circuit precedent as to what constitutes a monopoly. In *United States v. Grinnell Corp.*, for example, the Supreme Court explained that there was "no doubt" that 87% of the market constituted monopoly power for purposes of Section 2 of the Sherman Anti-Trust Act. 384 U.S. 563, 571 (1966). And in *United States v. E. I. du Pont de Nemours & Co.*, the Court thought "it may be assumed" that the defendant, which had 75% market share, did have monopoly power. 351 U.S. 377, 379, 391 (1956).

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my response to Question 19(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 19(a).

20. Please describe your understanding of the "federal common law."

Response: Black's Law Dictionary defines "federal common law" as the "body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between the states and foreign relations, but excluding all cases governed by state law." Black's Law Dictionary 313 (9th ed. 2004). Relatedly, Black's Law Dictionary defines "*general* federal common law" as, in the period before *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938),

"the judge-made law developed by federal courts in deciding disputes in diversity-of-citizenship cases." *Id.* The Supreme Court held in *Erie* that "[t]here is no federal general common law," 304 U.S. at 78; instead, federal courts apply substantive state law when exercising diversity jurisdiction.

21. 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: As a general matter, the interpretation of a right protected by a state constitution is a matter in the first instance for each state's highest court. Federal courts typically adhere to state court constructions of state law. *See Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) ("state courts are the ultimate expositors of state law," and federal courts "are bound by their constructions except in extreme circumstances"). I would therefore look to state court precedent to determine the scope of a right protected by a state constitution.

a. Do you believe that identical texts should be interpreted identically?

Response: In the abstract, the fact that two texts use identical wording is often relevant to how the texts are construed. But the Supreme Court has also explained "that identical language may convey varying content when used in different statutes, sometimes even in different provisions of the same statute." *Yates v. United States*, 574 U.S. 528, 537 (2015).

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Pursuant to the Supremacy Clause, the federal Constitution is "the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, § 2. The provisions of the federal Constitution therefore do bind the states, notwithstanding any provision of state constitutional law. Whether a provision of a state constitution guarantees greater protections than that afforded by the federal constitution is a question for each state's highest court.

22. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: It is generally not appropriate for me, as a judicial nominee, to comment on whether a Supreme Court decision was correctly or incorrectly decided, when it is possible that a related issue may come before the courts. That said, because the constitutionality of *de jure* racial segregation in public schools is one of the very few issues not likely to be relitigated, I am comfortable stating that I believe *Brown v. Board of Education* was correctly decided.

23. Do federal courts have the legal authority to issue nationwide injunctions?

Response: Injunctive relief is an equitable form of relief, issued in accordance with a court's inherent equitable authority and Federal Rule of Civil Procedure 65. Under the Administrative Procedure Act, Congress also authorized federal courts to "set aside" unlawful agency action. 5 U.S.C. § 706(2). The question whether these sources of authority empower federal courts to issue nationwide injunctions is a question currently subject to litigation and debate in the courts. If confirmed, I would adhere to all Supreme Court and First Circuit precedent on the permissible scope of injunctive relief, including the Supreme Court's instruction that "'injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.'" *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)).

a. If so, what is the source of that authority?

Response: Please see my response to Question 23.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Please see my response to Question 23.

24. 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 23.

25. What is your understanding of the role of federalism in our constitutional system?

Response: Our Founders enshrined in the Constitution a system of dual sovereignty, whereby power is divided between the federal government and the states, and under which "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const., amend. X; *see Murphy v. National Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1475 (2018). This federalist structure protects liberty by ensuring a diffusion of power between the state and federal governments. Subject to the Supremacy Clause of Article VI, it also enables the states to operate as "laboratories of democracy," able to devise different solutions to novel legal and policy problems. *See Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 817 (2015).

26. 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 5.

27. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: The question whether damages or injunctive relief is appropriate in any particular case depends on the facts of the case and the relief requested in the complaint. In general, damages are intended to compensate a party for past harm, while injunctive relief is intended to prevent ongoing or future harm.

28. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: The Supreme Court has construed the substantive component of the Due Process Clauses of the Fifth and Fourteenth Amendments to "provid[e] heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). Those fundamental rights must be "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Id.* at 720-21 (internal quotation marks and citations omitted). Among those fundamental rights protected by the due process clause are the "rights to marry, to have children, to direct the education of one's children, to marital privacy, to use contraception, [and] to bodily integrity." *Id.* at 720 (citations omitted).

29. 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 protects against discrimination on the basis of religion. In general, unless government action that burdens religion is "neutral and of general applicability," the government must establish that the law or policy advances a compelling government interest and is narrowly tailored to that interest. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 546 (1993). Only if the law or policy survives that "most rigorous of scrutiny" is the action constitutional. *Id.*

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: I do not understand the Supreme Court to have drawn a distinction between the freedom of religion and the freedom of worship for purposes of the Free Exercise Clause. The Supreme Court has described the right protected by the Free Exercise Clause as both the "free exercise of religion" and the "freedom of worship." *See, e.g.*, *Carson v. Makin*, 142 S. Ct. 1987, 1996 (2022) ("The Free Exercise Clause of the First Amendment protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.'" (quoting *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 450 (1988))); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942) (explaining that the "freedom of worship" is a fundamental right made applicable to the States by the Fourteenth Amendment (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940))). Government regulations that burden religious exercise and are not "neutral and generally applicable" trigger strict scrutiny under the Free Exercise Clause. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam).

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 29(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: Please see my response to Question 15.

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: By its terms, the Religious Freedom Restoration Act ("RFRA") provides that it "applies to all Federal law, and the implementation of that law," and that "[f]ederal statutory law adopted after November 16, 1993 is subject to [RFRA] unless such law explicitly excludes such application by reference" to RFRA. 42 U.S.C. §§ 2000bb-3(a), (b).

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.

30. 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 statement to refer to the principle that a judge must set aside any personal views and apply the law fairly and impartially in every case. When a judge follows that approach, she may not personally agree with the outcome of every decision she makes, but she is honoring her oath to "faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States." 28 U.S.C. § 453.

31. 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 only once taken the position that a federal or state statute was unconstitutional. In *Wesson v. Town of Salisbury*, 13 F. Supp. 3d 171 (D. Mass. 2014), the plaintiffs asserted an as-applied Second Amendment challenge to Mass. Gen. Laws c. 140, §§ 131(d)(i)(E) and 131A. I represented the Commonwealth of Massachusetts, which intervened as a defendant. After carefully considering the plaintiffs' claims, co-counsel and I concluded, on behalf of the Commonwealth, that, as applied, the statutes were not defensible or constitutional. We therefore filed a brief informing the Court that the Commonwealth would not oppose entry of judgment against it on the plaintiffs' as-applied Second Amendment challenge to the statutes.

32. 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 have not deleted any postings that I made to my long-private Facebook account or any other social media account. But, in advance of my nomination, I reviewed my Facebook account and noticed that old private messages sent to me by others appeared on my Facebook page. I deleted those messages to protect the privacy of the individuals who had sent the messages.

33. Do you believe America is a systemically racist country?

Response: I feel grateful every day to be an American citizen, and I believe deeply in America's founding ideals of equality, liberty, and justice under the law. If confirmed as a judge, my charge would be to impartially handle the individual cases that come before me, including those involving claims of racial discrimination, in accordance with the law. In my courtroom, everyone of all races would be treated equally and fairly.

34. Have you ever taken a position in litigation that conflicted with your personal views?

Response: Yes.

35. How did you handle the situation?

Response: I always understood that, under canons of professional ethics, I owed a duty to my client to provide zealous representation within the bounds of the law. I strived to offer my best counsel to my clients and was honored to represent my clients in court.

36. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

37. Which of the Federalist Papers has most shaped your views of the law?

Response: I have, over the years, consulted the Federalist Papers in handling cases on behalf of the Commonwealth and for personal interest. Although I am not sure that any one particular Federalist Paper has shaped my view of the law more than any other, Federalist No. 78, which describes the nature of judicial power and provides a rationale for judicial review, would be highly relevant to my work as a judge, if confirmed.

38. Do you believe that an unborn child is a human being?

Response: Consistent with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on that question. If confirmed, I would apply the law fairly and impartially and apply any binding Supreme Court and First Circuit precedent on this question.

39. 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, no.

40. 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.

41. 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.

42. 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: One of my primary responsibilities in my current role as Deputy State Solicitor, and in my prior role as supervisor to other Assistant Attorneys General, is to review briefs filed on behalf of the Commonwealth and its agencies and officials in state and federal court. I have, accordingly, edited or contributed to

many briefs filed without my name appearing in the counsel block. I do not have a list of all such briefs, and do not have access to all of the information I would need to compile such a list, but I estimate that there are several hundred briefs that would fall into this category.

43. Have you ever confessed error to a court?

Response: To the best of my recollection, I have not confessed error to a court.

a. If so, please describe the circumstances.

44. 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: Before testifying before the Senate Judiciary Committee, I swore an oath to testify truthfully and to the best of my ability, consistent with my professional and ethical obligations under Code of Conduct for United States Judges, which applies to judicial nominees. I have honored that oath in providing my testimony to the Committee.

Questions from Senator Thom Tillis
for Julia E. Kobick
Nominee to be United States District Judge for the District of Massachusetts

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

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary defines "judicial activism" as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." Black's Law Dictionary 922 (9th ed. 2004). Judicial activism is not appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is an expectation of and a requirement for every judge. The judicial oath requires judges to swear to "faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States." 28 U.S.C. § 453. If confirmed, I would abide by that oath.

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: I anticipate that the faithful application of the law will, at times, result in outcomes perceived by some as undesirable. Nevertheless, a judge must, in every case, set aside personal views and fairly and impartially apply the law. If confirmed, I would swear to "faithfully and impartially discharge" my duties, and I would do so to the best of my abilities. 28 U.S.C. § 453.

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 fully and faithfully apply all Supreme Court and First Circuit precedent concerning the Second Amendment, including the Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *Caetano v. Massachusetts*, 577 U.S. 411 (2016), and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

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: Americans retain constitutional rights during times of emergency, including pandemics. Should any case come before me concerning the lawfulness of pandemic-related policies, I would impartially and faithfully apply all relevant Supreme Court and First Circuit precedent, including the Supreme Court's decisions in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curiam), and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (per curiam), and the First Circuit's decision in *Bayley's Campground, Inc. v. Mills*, 985 F.3d 153 (1st Cir. 2021). In any case concerning Second Amendment rights, I would likewise impartially and faithfully apply all relevant Supreme Court and First Circuit precedent, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *Caetano v. Massachusetts*, 577 U.S. 411 (2016), and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

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: Law enforcement officers and other government officials are entitled to qualified immunity from individual-capacity claims for damages so long as "'their conduct [did] not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "Whether qualified immunity can be invoked depends on the 'objective legal reasonableness' of the official's act." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1866 (2017) (quoting *Harlow*, 457 U.S. at 819). Each assertion of qualified immunity must be analyzed individually and "depends very much on the facts of each case." *Brousseau v. Haugen*, 543 U.S. 194, 201 (2004). If confirmed, I would examine the facts of each case in which qualified immunity was raised, and I would assess whether the law enforcement officer or government official (1) "violated a statutory or constitutional right," and (2) whether "the right was 'clearly established' at the time of the challenged conduct." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011). If the answer to either question is no, the officer or official is entitled to qualified immunity.

10. **Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?**

Response: The question whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers is a question for policy makers. Consistent with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on that question. If confirmed, I would fully and faithfully apply all relevant Supreme Court and First Circuit precedent concerning qualified immunity.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: The proper scope of qualified immunity protections is a question for policy makers. Consistent with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on that topic. If confirmed, I would fully and faithfully apply all relevant Supreme Court and First Circuit precedent concerning qualified immunity.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: I have not handled cases concerning patent eligibility or studied the Supreme Court's jurisprudence in this area. In general, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on the merits of the Supreme Court's decisions on patent eligibility. If confirmed, I would carefully research the provision of the Patent Act that defines patentable subject matter, 35 U.S.C. § 101, and the Supreme Court's decisions interpreting that statute. For example, the Court has long held, under an implicit exception to Section 101, that "[l]aws of nature, natural phenomena, and abstract ideas are not patentable." *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013). And the Court has adopted a framework for assessing patent eligibility under Section 101. *See Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217-18 (2014); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77-80 (2012). I would be bound to adhere to the Supreme Court's decisions, and I would do so to the best of my ability.

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: Consistent with Canon 3 of the Code of Conduct for United States Judges, as a judicial nominee, I must respectfully refrain from commenting on this hypothetical case, because sharing views on a hypothetical case could suggest prejudgment of an issue that might come before me.

b. ***FinServCo*** **develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?**

Response: Consistent with Canon 3 of the Code of Conduct for United States Judges, as a judicial nominee, I must respectfully refrain from commenting on this hypothetical case, because sharing views on a hypothetical case could suggest prejudgment of an issue that might come before me.

c. ***HumanGenetics*** **Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

Response: Consistent with Canon 3 of the Code of Conduct for United States Judges, as a judicial nominee, I must respectfully refrain from commenting on this hypothetical case, because sharing views on a hypothetical case could suggest prejudgment of an issue that might come before me.

d. ***BetterThanTesla ElectricCo*** **develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla's* billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Consistent with Canon 3 of the Code of Conduct for United States Judges, as a judicial nominee, I must respectfully refrain from commenting on this hypothetical case, because sharing views on a hypothetical case could suggest prejudgment of an issue that might come before me.

e. ***Natural Laws and Substances, Inc.*** **specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if**

the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?

Response: Consistent with Canon 3 of the Code of Conduct for United States Judges, as a judicial nominee, I must respectfully refrain from commenting on this hypothetical case, because sharing views on a hypothetical case could suggest prejudgment of an issue that might come before me.

f. **A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Consistent with Canon 3 of the Code of Conduct for United States Judges, as a judicial nominee, I must respectfully refrain from commenting on this hypothetical case, because sharing views on a hypothetical case could suggest prejudgment of an issue that might come before me.

g. ***BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?**

Response: Consistent with Canon 3 of the Code of Conduct for United States Judges, as a judicial nominee, I must respectfully refrain from commenting on this hypothetical case, because sharing views on a hypothetical case could suggest prejudgment of an issue that might come before me.

h. **Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: Consistent with Canon 3 of the Code of Conduct for United States Judges, as a judicial nominee, I must respectfully refrain from commenting on this

hypothetical case, because sharing views on a hypothetical case could suggest prejudgment of an issue that might come before me.

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: Consistent with Canon 3 of the Code of Conduct for United States Judges, as a judicial nominee, I must respectfully refrain from commenting on this hypothetical case, because sharing views on a hypothetical case could suggest prejudgment of an issue that might come before me.

j. ***Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Consistent with Canon 3 of the Code of Conduct for United States Judges, as a judicial nominee, I must respectfully refrain from commenting on this hypothetical case, because sharing views on a hypothetical case could suggest prejudgment of an issue that might come before me.

14. **Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: Please see my responses to Questions 12 and 13.

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: My career has primarily focused on civil litigation, and in particular on constitutional and administrative law. I have not had occasion to handle cases concerning copyright law.

b. **Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

Response: I have not had occasion to handle cases concerning 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: My career has primarily focused on civil litigation, and in particular on constitutional and administrative law. Although I reviewed the amicus brief filed on behalf of Massachusetts and 25 other states and the District of Columbia in *Gonzalez v. Google LLC*, No. 21-1333, a case pending in the Supreme Court that concerns Section 230 of the Communications Decency Act, I have not otherwise had occasion to handle cases concerning intermediary liability for online service providers.

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: I have, in my capacity as Assistant Attorney General, defended Massachusetts's statutes or government actions against First Amendment speech claims. I have not, however, had occasion to handle cases dealing with copyright or other 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: In any case of statutory construction, I would begin by researching whether the Supreme Court or First Circuit has construed the statute and, if so, I would adhere to that construction. Absent binding precedent, I would begin by examining the text of the statute. *See Ross v. Blake*, 578 U.S. 632, 638 (2016) ("Statutory interpretation, as we always say, begins with the text."). If the meaning of the statute is clear, I would apply it as written. If the statute is ambiguous, I would consider pertinent canons of statutory construction, look to the overall structure of the statute and any related provisions, and consult legislative history to resolve the ambiguity. *See, e.g.*, *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011).

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: When Congress has charged a federal agency with implementing a statute, and that agency construes ambiguity in the statute through an action, usually rulemaking or formal adjudication, that carries the force of law, courts owe deference to the agency's reasonable construction of ambiguity in the statute. *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984). When the agency construes the statute through an action that does not carry the force of law, the agency's construction "may merit some deference whatever its form, given the specialized experience and broader investigations and information available to the agency, and given the value of uniformity in its administrative and judicial understandings of what a national law requires." *United States v. Mead Corp.*, 533 U.S. 218, 234 (2001) (citations and internal quotation marks omitted); *see also Doe v. Leavitt*, 552 F.3d 75, 79 (1st Cir. 2009).

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: Consistent with the Code of Conduct for United States Judges, it would not be appropriate for me, as a judicial nominee, to share personal views, if any, on that question. If confirmed, I would fully and faithfully apply all relevant Supreme Court and First Circuit precedent concerning copyright infringement.

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: The question whether laws like the Digital Millennium Copyright Act properly address the state of the internet today is a question for policy makers. If confirmed, and if any question concerning the Digital Millennium Copyright Act were to come before me, I would research whether the Supreme Court or First Circuit has construed the relevant portion of the statute. If so, I would adhere to binding precedent. If not, I would examine the plain text of the statute and, if clear, apply the statute as written. If the statute is ambiguous, I would consider pertinent canons of statutory construction, look to the overall structure of the statute, and consult legislative history to resolve the ambiguity.

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: Please see my response to Question 17(a).

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: In general, the question whether "judge shopping" or "forum shopping" is a problem in litigation is for policy makers to decide. If confirmed, I would fully and faithfully apply the venue rules and binding precedent in any case that comes before me. Among those rules is Local Rule 40.1 of the United States District Court for the District of Massachusetts, under which cases are assigned in accordance with neutral criteria. I am also aware that some Supreme Court precedent addresses forum shopping; for example, in determining whether a rule is substantive or procedural for purposes of the *Erie* doctrine, the Court has adopted a functional test based on the "twin aims of the *Erie* rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws." *Hanna v. Plumer*, 380 U.S. 460, 468 (1965).

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: Please see my response to Question 18(a).

c. Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?

Response: I am not familiar with the term "forum selling." But I do not believe it is appropriate for a judge to take affirmative steps to attract a particular type of case or litigant. A judge has a duty to fairly and impartially preside over all cases and litigants that come before the court.

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: If confirmed, I would not take affirmative steps to attract a particular type of case or litigant. A judge has a duty to fairly and impartially preside over all cases and litigants that come before the court.

19. In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.

a. What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?

Response: I am not familiar with the circumstances described in this question. As a judicial nominee, I do not believe it appropriate for me to comment on matters concerning another federal judge or on cases handled by another federal judge or court of appeals. Nevertheless, as a general matter, every judge has a duty to adhere to the binding precedent of a higher court.

b. Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?

Response: Please see my response to Question 19(a).

20. When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?

Response: Respectfully, this question is one for policy makers and for the Judicial Conference of the United States. As a judicial nominee, I do not think it appropriate for me to comment. If confirmed, I would fully and faithfully apply the venue rules and binding precedent in any case that comes before me.

a. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: Please see my answer to Question 20.

b. To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: Please see my answer to Question 20.

21. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and

the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

a. If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?

Response: I am not familiar with the circumstances described in this question. As a judicial nominee, I do not believe it appropriate for me to comment on matters concerning another federal judge or on cases handled by another federal judge or court of appeals.

b. Would five mandamus reversals be sufficient? Ten? Twenty?

Response: Please see my response to Question 21(a).

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Rita Faye Lin
Nominee to be United States District Judge, Northern District of California

1. **In a college piece, you wrote that: "The problem with the Christian Coalition is not that they are Bible-thumpers (there are personal beliefs that often result from religious experiences) but that they're bigots." If you are confirmed, how can litigants be assured that you will not allow this bias on your part to impact your rulings and opinions?**

   Response: I do not agree with that statement today. I wrote that when I was 20 years old, in an emotional reaction to the death of Matthew Shepard, and it reflected my limited life experience. I'm now more than 24 years older than I was when I wrote those words, and I am proud to have friends, colleagues, and associates who have a wide range of religious, political, and personal views. And, in general, my adult life over the last two decades as a wife, mother, and member of our local church has enriched my understanding of the human experience, as has my professional career as a civil litigator, federal prosecutor, and judge. In my four years as a judge, I have adjudicated all cases before me without bias of any kind, and I would do the same on the federal bench, if confirmed.

2. **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: I disagree. Judges should set aside their personal values in interpreting the law, including the Constitution. Instead, judges should interpret the law fairly and impartially, applying binding precedent to the factual record and evidence in the case before them.

3. **Please define the term "living constitution."**

   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." *Black's Law Dictionary* (11th ed. 2019).

4. **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: That is a question better answered by policymakers and law enforcement officials. The adequacy and appropriateness of a government response to a call for service is an issue that could come before me as a judge, so it would be inappropriate for me to comment further.

5. **Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest racial injustice?**

   Response: If confirmed and confronted with a case involving the application of COVID-19 mandates to a protest, I would fully and faithfully apply the binding precedents of the Supreme Court and Ninth Circuit to the facts and evidence before me. Depending on the specific facts, that could include the Supreme Court's recent decisions regarding the application of COVID-19 restrictions to burden the exercise of constitutional rights in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) and *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021).

6. **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: If confirmed and confronted with a case involving the application of COVID-19 mandates to individuals attempting to practice their religion in a place of religious worship, I would fully and faithfully apply the binding precedents of the Supreme Court and Ninth Circuit to the facts and evidence before me. Depending on the specific facts, that could include the Supreme Court's recent decisions regarding the application of COVID-19 restrictions to burden free exercise in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) and *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021).

7. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

   Response: Yes, if the officer reasonably suspects (1) that the person is committing or has committed a crime and (2) that the person is armed and dangerous. *Terry v. Ohio*, 392 U.S. 1 (1968).

8. **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 unfamiliar with the cited statement from then-Judge Ketanji Brown Jackson concerning a "living constitution." I believe the Constitution has an enduring fixed quality that does not change over time, though it is applied to new circumstances in our modern times. The Constitution may be changed only through the amendment process provided in Article V.

9. **Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

   Response: I am unaware of any Supreme Court decision analyzing the constitutionality of 18 U.S.C. § 1507. The Supreme Court upheld a potentially analogous state statute in Louisiana against a facial constitutional challenge in *Cox v. Louisiana*, 379 U.S. 559, 564

(1965). As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding the constitutionality of a law. If confirmed, I would fully and faithfully apply any precedents of the Supreme Court and Ninth Circuit in any case concerning the constitutionality of 18 U.S.C. § 1507 or a state analog to that statute.

10. Should judicial decisions take into consideration principles of social "equity"?

Response: Generally, no. Judicial decisions should be made based on the applicable law and the factual record and evidence before the court. However, in some circumstances, the law requires the court to consider equity. For example, in adjudicating a request for a preliminary injunction, courts must examine the "balance of equities" and the "public interest." *See, e.g.*, *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where required by law, it is proper for courts to consider equities.

11. What is implicit bias?

Response: Merriam-Webster's Dictionary defines "implicit bias" as "a bias or prejudice that is present but not consciously held or recognized."

12. Is the federal judiciary affected by implicit bias?

Response: I have not reviewed empirical research on whether the federal judiciary holds biases or prejudices that are present but not consciously held or recognized. That is a question better directed at academics or psychologists. As a sitting judge and judicial nominee, it would be inappropriate for me to opine on the issue, because I could be presented with a case alleging that the judge handling it acted in a biased manner. If confirmed and confronted with such a case, I would fully and faithfully apply the binding precedents of the Supreme Court and Ninth Circuit to the factual record and evidence before me.

13. Do you have any implicit biases? If so, what are they?

Response: I am not aware of having implicit biases. As a judge, my oath requires me to adjudicate matters fairly and without bias, and to recuse myself in any situation in which I could not be unbiased.

14. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

Response: Criticism of an opinion typically involves finding fault with the reasoning of an opinion. An "attack" on a judge typically involves a threat of violence or a physical assault. That term is also sometimes used to describe *ad hominem* attacks on a judge's character or background.

15. Do you think the Supreme Court should be expanded?

Response: The Constitution delegates to Congress the power to determine the size of the Supreme Court. As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on the issue. I will faithfully apply all precedents of the Supreme Court regardless of its size.

16. Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?

Response: I do not regard any single factor as the most important in sentencing. Sentencing is a highly individualized, fact-specific determination. If I am confirmed, I would apply binding precedents of the Supreme Court and the Ninth Circuit regarding sentencing, and I would consider all the factors outlined in 18 U.S.C. § 3553(a).

17. In what situation(s) does qualified immunity not apply to a law enforcement officer in California?

Response: In a suit under 42 U.S.C. § 1983 against a law enforcement officer in any state, qualified immunity does not apply when the plaintiff has demonstrated both (1) that the officer violated a statutory or constitutional right; and (2) that the right was clearly established at the time of the violation. *Saucier v. Katz*, 533 U.S. 194, 200 (2001). "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* at 202.

18. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: That is a question best suited for policymakers and law enforcement officials. As a sitting judge and judicial nominee, I should not express an opinion on that topic. In my current assignment as a judge overseeing criminal trials, parties sometimes contend that law enforcement investigation in a particular case was insufficient and/or affected by lack of funding, and it would therefore be inappropriate for me to state a personal view regarding the appropriate level of such funding.

19. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.

Response: There is not any specific Supreme Court decision that exemplifies my judicial philosophy. My judicial philosophy is to resolve the case or controversy before me in a manner that is diligent, open-minded, and fair. I diligently review the applicable law, factual record, evidence, and written submissions of the parties. I listen with an open mind to the parties' arguments and the evidence presented. Then, I provide the parties with a prompt decision that clearly explains my ruling and the reasoning behind it, as well as any issues that I have not decided. For each case that comes before me, I set a

tone in the courtroom that treats litigants with respect and dignity and conveys my recognition of how important the case is to the individual parties.

20. Please identify a Ninth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.

Response: There is not any specific Ninth Circuit decision that exemplifies my judicial philosophy. As to my judicial philosophy, please see my response to Question 19.

21. Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:

a. Was *Brown v. Board of Education* correctly decided?

Response: Yes. As a sitting judge and judicial nominee, I generally refrain from expressing an opinion regarding whether a particular case was correctly decided. However, because it is unlikely that I will ever be asked to adjudicate the constitutionality of laws requiring racial segregation, I can state my view that *Brown* was correctly decided.

b. Was *Loving v. Virginia* correctly decided?

Response: Yes. As a sitting judge and judicial nominee, I generally refrain from expressing an opinion regarding whether a particular case was correctly decided. However, because it is unlikely that I will ever be asked to adjudicate the constitutionality of laws prohibiting interracial marriage, I can state my view that *Loving* was correctly decided.

c. Was *Griswold v. Connecticut* correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit.

d. Was *Roe v. Wade* correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit. In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court overruled *Roe v. Wade*, and *Roe* is no longer good law.

e. Was *Planned Parenthood v. Casey* correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit. In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court overruled *Casey*, and *Casey* is no longer good law.

f. Was *Gonzales v. Carhart* correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit.

g. Was *District of Columbia v. Heller* correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit.

h. Was *McDonald v. City of Chicago* correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit.

i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit.

j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit.

k. Was *Dobbs v. Jackson Women's Health* correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit.

22. How do you understand the difference, if any, between freedom of religion and freedom of worship?

Response: Freedom of religion is significantly broader than the freedom of worship. The Free Exercise Clause "protects not only the right to harbor religious beliefs inwardly and secretly" but also protects "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022).

23. Do you believe that the federal government should decriminalize possession of any drugs?

Response: That is a question best suited for policymakers. As a sitting judge and judicial nominee, it would be inappropriate for me to comment on that topic because drug laws or amendments to drug laws could be the subject of litigation before me. In any case involving a law decriminalizing possession of drugs, I would fairly and impartially assess the case based on the evidence presented and the applicable law, including any binding precedents.

24. Do you agree that the First Amendment is more often a tool of the powerful than the oppressed?

Response: I have not studied whether First Amendment protections are more often applied to certain parties. As a sitting judge and judicial nominee, it would be inappropriate for me to comment on any personal views regarding the First Amendment, which is a topic of potential litigation in the courts. In any case involving the First Amendment, I would fairly and impartially assess the case based on the evidence presented and the applicable law, including any binding precedents.

25. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?

Response: Where a statute or regulation covers individual conduct that is within the plain text of the Second Amendment's protections, the government must demonstrate that the statute or regulation is "consistent with this Nation's historical tradition of firearm regulation." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

26. When you are considering a case, do you have a process for ensuring that you correctly understand how the law should apply, without letting personal preferences shape your view? If so, what is your process or approach?

Response: Yes. First, I diligently review the parties' written submissions, the applicable law, and the factual record and evidence, and research any legal issues with which I am not already familiar. Second, I listen to the arguments of the attorneys and the evidence presented with an open mind. I am transparent with the attorneys regarding my initial thoughts, so that they can probe and challenge my thinking. Third, I render my decision based entirely on the law and the facts before me, and I limit my ruling to the case or controversy presented. I make a clear record of my factual findings and legal reasoning, so that if there is an appeal, the appellate court can understand the basis for my decision and assess it thoroughly.

27. 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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?

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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?

Response: No.

28. 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.

29. 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.

30. 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.

31. 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.

32. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: In February 2021, I submitted applications to the State Chairs of Senator Feinstein's and Senator Padilla's Judicial Advisory Committees for consideration for nomination to the United States District Court for the Northern District of California. On March 19, 2021, I received a request from the State Chair of Senator Feinstein's Judicial Advisory Committee to schedule an interview. On March 22, 2021, in preparation for that interview, I provided supplemental materials to Senator Feinstein's Committee, which I was informed would also be shared with Senator Padilla's Committee. On March 31, 2021, I interviewed with the State Chair of Senator Feinstein's Judicial Advisory

Committee. On April 19, 2022, I received an email communication from Senator Padilla's Counsel on Judicial Nominations requesting an interview, and spoke to him the next day. On May 20, 2022, I interviewed with attorneys from White House Counsel's Office. On May 21, 2022, the White House Counsel's Office advised that I was being considered for nomination to the United States District Court for the Northern District of California. Since May 22, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 1, 2022, my nomination was submitted to the Senate.

33. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

34. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf?? If so, what was the nature of those discussions?

Response: In early 2021, I had a conversation with a friend and former colleague who was on the board of the American Constitution Society's Bay Area chapter at that time, though she is no longer on the board now. In that conversation, the subject of my application to the federal bench came up. My friend asked if she could pass along information about my application to the American Constitution Society and I agreed. I have not had any contact with the American Constitution Society regarding my application since then.

35. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? 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.

36. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

37. During your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

38. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

Response: On May 20, 2022, I interviewed with attorneys from White House Counsel's Office. On May 21, 2022, the White House Counsel's Office advised that I was being considered for nomination to the United States District Court for the Northern District of California. Between May 22, 2022, and July 17, 2022, I communicated with the Office of Legal Policy at the Department of Justice ("OLP") concerning my vetting and background check. On July 28, 2022, White House Counsel's Office communicated to me that the White House anticipated that it would announce its intent to nominate me the next day, which it did. On August 1, 2022, my nomination was submitted to the Senate. Between August 4, 2022, and August 17, 2022, I communicated with OLP regarding my Senate Judiciary Questionnaire, the attachments, and the financial disclosure forms. Between November 2, 2022, and November 30, 2022, I communicated with the White House Counsel's Office staff and/or OLP staff regarding the confirmation hearing. I received questions for the record on December 7, 2022, from OLP. After I drafted my responses, I received feedback from OLP regarding my draft responses, finalized my responses, and then transmitted the responses back to OLP for filing.

39. Please explain, with particularity, the process whereby you answered these questions.

Response: I received the questions on December 7, 2022, from the Office of Legal Policy at the Department of Justice. I reviewed the questions, conducted legal research, and drafted my responses. I received feedback from the Office of Legal Policy regarding my draft responses, which I considered before finalizing my responses.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Rita Lin, nominated to be United States District Judge for the Northern District of California

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Is racial discrimination wrong?

Response: Yes. Racial discrimination is illegal under a variety of federal laws. Supreme Court precedents establish that government classifications based on race are subject to strict scrutiny, and allow such classifications only when narrowly tailored to serve a compelling government interest. *See, e.g.*, *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995).

2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

Response: The Supreme Court has held that unenumerated rights are protected under the Due Process Clause when such rights are objectively "deeply rooted in this Nation's history and tradition" and are "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksburg*, 521 U.S. 702, 720-21 (1997). If I were confirmed and I had a case before me that sought recognition of an unenumerated right not previously recognized under binding precedent, I would apply *Glucksburg* and any other relevant precedent of the Supreme Court and the Ninth Circuit.

3. How would you characterize your judicial philosophy? 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 resolve the case or controversy before me in a manner that is diligent, open-minded, and fair. I diligently review the applicable law, factual record, evidence, and written submissions of the parties. I listen with an open mind to the parties' arguments and the evidence presented. Then, I provide the parties with a prompt decision that clearly explains my ruling and the reasoning behind it, as well as any issues that I have not decided. For each case that comes before me, I set a tone in the courtroom that treats litigants with respect and dignity and conveys my recognition of how important the case is to the individual parties.

While I am not sufficiently familiar with the judicial philosophies of each Supreme Court Justice from those Courts to state whose is most analogous to mine, Justice Kagan was my first-year Civil Procedure professor in law school, and I have always admired her ability to explain complex legal concepts in a way that everyone can understand. In issuing my rulings, I strive to live up to her example of communicating in a clear, plainspoken way.

4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an 'originalist'?

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." *Black's Law Dictionary* (11th ed. 2019). I do not use any particular label to describe my approach to interpreting the law. If confirmed, I would follow the interpretive methods that the Supreme Court and Ninth Circuit have used to interpret the law at issue, including applying the original public meaning where appropriate. *See, e.g., N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?**

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." *Black's Law Dictionary* (11th ed. 2019). I believe the Constitution has an enduring fixed quality that does not change over time, though it is applied to new circumstances in our modern times. The Constitution may be changed only through the amendment process provided in Article V. If confirmed, I would follow binding Supreme Court and Ninth Circuit precedent and interpret the Constitution in the manner directed by those precedents.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: If I were confirmed and presented with a constitutional issue of first impression whose resolution is not controlled by binding precedent, I would follow the precedents of the Supreme Court and Ninth Circuit concerning the methods of interpretation applicable to that constitutional provision, including applying the original public meaning where appropriate. *See, e.g., N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

7. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: In some circumstances, it can be. For example, in certain First Amendment contexts, the constitutional analysis includes looking to "contemporary community standards." *See, e.g., Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 574-75 (2002). I would follow binding precedents of the Supreme Court and Ninth Circuit in determining when the public's current understanding should be considered in determining the meaning of the Constitution or a statute.

8. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: No. I believe the Constitution has an enduring fixed quality that does not change over time, though it is applied to new circumstances in our modern times. The Constitution may be changed only through the amendment process provided in Article V. If confirmed, I would follow binding Supreme Court and Ninth Circuit precedent and interpret the Constitution in the manner directed by those precedents.

9. Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?

Response: Yes.

a. Was it correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit.

10. Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?

Response: Yes.

a. Was it correctly decided?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to state an opinion regarding whether a particular case was correctly decided. If confirmed, I would fully and faithfully follow the binding precedents of the Supreme Court and the Ninth Circuit.

11. Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?

Response: Yes.

a. Was it correctly decided?

Response: Yes. As a sitting judge and judicial nominee, I generally refrain from expressing an opinion regarding whether a particular case was correctly decided. However, because it is unlikely that I will ever be asked to adjudicate the constitutionality of laws requiring racial segregation, I can state my view that *Brown* was correctly decided.

12. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?

Response: Under the Bail Reform Act, a rebuttable presumption in favor of pretrial detention arises when a person has been charged with one or more of the offenses listed in 18 U.S.C. § 3142(e)(2) and (e)(3), which includes certain offenses involving drug trafficking, firearms, terrorism, human trafficking, and minor victims.

a. What are the policy rationales underlying such a presumption?

Response: The presumption under the Bail Reform Act reflects Congress's determination that a defendant's arrest for certain offenses suggests "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 1342(e).

13. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?

Response: Yes. Under the Constitution, laws that burden the free exercise of religion are subject to strict scrutiny unless they are neutral and generally applicable. *See Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531-32 (1993). If the law treats any comparable secular activity more favorably than religious exercise, or if the government acts out of hostility toward religious beliefs, strict scrutiny applies. *See Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). To survive strict scrutiny, the law must be narrowly tailored to further a compelling government interest.

In addition to the protections of the Constitution, the Religious Freedom Restoration Act prohibits the federal government from substantially burdening a person's free exercise of religion unless the law is the least restrictive means of furthering a compelling government interest. *See* 42 U.S.C. § 2000bb-1. The RFRA applies to organizations, including closely held for-profit corporations. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

14. Is it ever permissible for the government to discriminate against religious organizations or religious people?

Response: Strict scrutiny would apply to any law that either (1) treats religious organizations or religious people non-neutrally or (2) singles them out for discrimination with rules not generally applicable to others. *Church of Lukumi Bablau Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993); *see also Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). Such a law would be permissible only if narrowly tailored to serve a compelling government interest. "A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases." *Lukumi*, 508 U.S. at 546.

15. 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 granted the request for a preliminary injunction. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020). The Court concluded that the petitioners had shown a likelihood of success on the merits. The Court held that the executive order was not neutral because it "single[d] out houses of worship for especially harsh treatment," and that the executive order failed strict scrutiny because less restrictive rules could serve the government's interest in reducing COVID-19 risk. *Id.* at 67. The Court further concluded that the other requirements of a preliminary injunction were met, including irreparable harm based on the curtailment of the petitioners' free exercise rights. *Id.*

16. **Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom.***

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court granted a preliminary injunction against the application of California's COVID-19 restrictions to prohibit more than three households from gathering inside the home for religious worship. The Court held that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id.* at 1296. The Court found that California allowed secular businesses to assemble more people indoors than comparable at-home religious gatherings, even though the Court found that the secular activities did not pose any lesser health threat than the at-home religious activities. *Id.* at 1297. The Court therefore applied strict scrutiny, and found that California failed to show that its restrictions were narrowly tailored to a compelling government interest. *Id.*

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

Response: Yes.

18. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.***

Response: The Supreme Court concluded that the Colorado Civil Rights Commission violated a baker's free exercise rights when it treated his refusal to provide services for a same-sex wedding with a "clear and impermissible hostility toward the sincere religious

beliefs that motivated his objection." *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1729 (2018).

19. Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?

Response: Yes, so long as those religious beliefs are sincerely held. "[I]it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Court are not arbiters of scriptural interpretation." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981).

a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?

Response: Please see my response to Question 19.

b. Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?

Response: Please see my response to Question 19.

c. Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?

Response: It is inappropriate for me to opine on the official position of any religion on any topic. That is a question for religious leaders.

20. In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.

Response: The Supreme Court has recognized a "ministerial exception" that prevents courts from hearing employment disputes involving those holding certain important positions with churches and other religious institutions. In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that the ministerial exception applied to two teachers at a private Catholic school whose duties included "educating and forming students in the Catholic faith." *Id.* at 2069. The Court found that this role "lay at the core of the mission of the schools where they taught," and that "judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow." *Id.* The Court therefore found that the ministerial exception precluded the courts from hearing the teachers' employment discrimination claims. *Id.*

21. 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 Philadelphia's refusal to contract with Catholic Social Services was not based on a generally applicable rule, because the city ordinance granted city officials discretion to waive the provisions at issue. *Fulton v. City of Pennsylvania*, 141 S. Ct. 1868, 1878 (2021). Strict scrutiny therefore applied. The Court found that there was "no compelling reason" for Philadelphia's decision to deny the exception to Catholic Social Services while making the exception available to others, and therefore found Philadelphia's refusal to be in violation of the Free Exercise Clause. *Id.* at 1881-82.

22. In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.

Response: The Supreme Court held that Maine's tuition assistance program violated the Free Exercise Clause by limiting such assistance to "non-sectarian" schools. *Carson v. Makin*, 142 S. Ct. 1987, 1997 (2022). The Court found that Maine's program excluded religious schools from a public benefit based on their religious nature, which penalized free exercise and triggered strict scrutiny. *Id.* The Court further held Maine's program failed strict scrutiny because excluding religious schools from the tuition assistance program was not required by the Establishment Clause, and was therefore not a compelling government interest. *Id.*

23. Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District.*

Response: The Supreme Court held that Bremerton School District violated the free speech and free exercise rights of a high school football coach by disciplining him for engaging in a quiet prayer on the football field after games. *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022). The Court rejected the school's argument that it was required to restrict the coach's First Amendment rights in order to comply with the Establishment Clause, concluding that the coach's actions were his own private expression and not undertaken as a spokesman for the school. *Id.* at 2429.

24. Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court vacated the judgment and remanded the case back to the Minnesota courts for further

proceedings in light of *Fulton v. City of Pennsylvania*, 141 S. Ct. 1868, 1878 (2021). Justice Gorsuch wrote a separate concurrence noting that the lower courts had incorrectly applied the Religious Land Use and Institutionalized Persons Act. *Mast*, 141 S. Ct. at 2432 (Gorsuch, J., concurring). The issue in *Mast* was an ordinance requiring a modern septic system that was contrary to the Swartzentruber Amish's faith. Justice Gorsuch found that the lower court had erred in treating "the County's *general* interest in sanitation regulations as 'compelling' without reference to the *specific* application of those rules to *this* community." *Id.* "Courts cannot rely on broadly formulated governmental interests, but must scrutinize the asserted harm of granting specific exemptions to particular religious claimants." *Id.* (internal quotation marks and alterations omitted).

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: I am unaware of any Supreme Court decision analyzing the interaction between the First Amendment right to assembly and 18 U.S.C. § 1507. The Supreme Court upheld a potentially analogous state statute in Louisiana against a facial constitutional challenge in *Cox v. Louisiana*, 379 U.S. 559, 564 (1965). As a sitting judge and judicial nominee, it would be inappropriate for me to comment further on the factual scenario described in the question. If confirmed, I would fully and faithfully apply any precedents of the Supreme Court and Ninth Circuit to any case alleging a violation of 18 U.S.C. § 1507, and would analyze the case based on relevant or analogous precedents and the factual record.

26. **Would it be appropriate for the court to provide its employees trainings which include the following:**

    a. **One race or sex is inherently superior to another race or sex;**

    b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

    c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

    d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response: No.

27. **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 the court providing any such trainings, and if confirmed, I would not support providing such trainings.

28. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

Response: Yes. If I am confirmed, I will select and hire law clerks and other staff in compliance with all applicable federal laws prohibiting racial discrimination in hiring.

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

Response: The Constitution delegates the appointment power to the President, with the advice and consent of the Senate. When carrying out those duties, the executive and legislative branches must act in compliance with the Constitution and any applicable federal laws. As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on the legality or appropriateness of the consideration of race or sex in making political appointments.

30. Is the criminal justice system systemically racist?

Response: Systemic issues are for policymakers to address. As a judge, my role is to decide the individual case or controversy before me. If I were presented with a case in which there were allegations of racial discrimination, I would assess it based on the factual record and evidence in the case, as well as the applicable law.

31. President Biden has created a commission to advise him on reforming the U.S. Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: The Constitution delegates to Congress the power to determine the size of the Supreme Court. As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on the issue. I will faithfully apply all precedents of the Supreme Court regardless of its size.

32. In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?

Response: No.

33. What do you understand to be the original public meaning of the Second Amendment?

Response: The Second Amendment "protect[s] an individual right to armed self-defense." *New York Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2128 (2022).

34. What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?

Response: Where the Second Amendment's text covers the conduct at issue, the government must demonstrate that its regulation of that conduct is "consistent with this Nation's historical tradition of firearm regulation." *New York Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

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

Response: Yes. The Second Amendment protects "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008); *see also McDonald v. Chicago*, 561 U.S. 742 (2010).

36. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: No. The interpretation of the Second Amendment "accords with how we protect other constitutional rights." *New York Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2130 (2022).

37. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: The right to own a firearm is a fundamental right, like the right to vote. *McDonald v. Chicago*, 561 U.S. 742 (2010). I am aware of no authority suggesting that the right to own a firearm is entitled to less protection than the right to vote.

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

Response: The Supreme Court held that the executive branch generally has "absolute discretion" to decide whether to initiate civil or criminal enforcement proceedings. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). As a sitting judge and a judicial nominee, it would be inappropriate for me to comment further, because cases are currently pending in the courts concerning the scope of the Executive's authority to decline to enforce certain laws.

39. Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.

Response: Black's Law Dictionary defines "prosecutorial discretion" as a "prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the

court." *Black's Law Dictionary* (11th ed. 2019). In the administrative law context, a "substantive rule" (also known as a "legislative rule") is an "administrative rule created by an agency's exercise of delegated quasi-legislative authority" and "has the force of law." *Black's Law Dictionary* (11th ed. 2019).

40. Does the President have the authority to abolish the death penalty?

Response: No. State legislatures enacted state death penalty statutes, and the President lacks the authority to invalidate or abolish state laws. Likewise, for federal offenses, Congress enacted the federal death penalty statute, 18 U.S.C. § 3591 *et seq.*, and the President lacks the authority to invalidate or abolish federal laws.

41. 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 held that the Centers for Disease Control and Prevention (CDC) lacked the statutory authority to issue a nationwide moratorium on evictions based on the COVID-19 pandemic. *Alabama Association of Realtors v. HHS*, 141 S. Ct. 2485 (2021). The Court concluded that it would have expected "Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance," and that there was no such clear statement in the Public Health and Service Act. *Id.* at 2489 (internal citations and quotations omitted). The Court vacated the stay on the lower court's ruling, finding that applicants were "virtually certain to succeed on the merits of their argument" that the CDC acted beyond its authority. *Id.*

42. You argued *Golinski v. United States Office of Personnel Management*, one of the cases that challenged the Defense of Marriage Act. Leading up to oral argument in the case, you commented publicly, "the demise of this discriminatory statue is long overdue."

a. Would you describe those in Congress who voted for the law, and President Bill Clinton, who signed it into law, as seeking to discriminate?

Response: No. The Supreme Court held in *United States v. Windsor*, 577 U.S. 744 (2013), that the Defense of Marriage Act had the "purpose and effect" of discriminating against same-sex marriages in a manner that violated equal protection and due process. *Id.* at 770. While I was in private practice, my law firm represented Ms. Golinski, and I worked on that representation. As Ms. Golinski noted in her arguments in that case, the fact that a law fails constitutional scrutiny does not mean that the individual legislators who voted for the law were motivated by malice or a hostile intent. The district court made the same point in its ruling in favor of Ms. Golinski. *See Golinski v. U.S. Off. of Pers. Mgmt.*, 824 F. Supp. 2d 968, 1002 (N.D. Cal. 2012).

43. You participated in the preparation of the San Francisco Superior Court's statement on equity and justice. The statement made the following claims.

"persistent systemic racism continues to this day, and there is much work left for courts to do to make racial equity and inclusion a lived reality for all."

a. Is the United States a systemically racist country?

Response: I understand the term "systemic racism" to refer to patterns of racial discrimination. America is the best country in the world, and my parents immigrated here because it is a beacon of freedom and opportunity. Unfortunately, incidents of racial discrimination and racially motivated hate crimes do persist in modern times in our country, and can occur in patterns. I do not have data on the frequency or prevalence of those patterns. When such patterns arise, it is important for those issues to be discussed and for policymakers to consider how to address them. As a judge, I am focused on the individual case or controversy before me, rather than on larger systemic issues. My focus is on treating everyone in my courtroom fairly and without bias, regardless of their background.

b. What is the role of the courts to make racial equity and inclusion a "lived reality" for all?

Response: It is vitally important that courts stand for the core constitutional principle of equal justice under law. Courts have a responsibility to set a tone that is inclusive and inviting to those of all backgrounds. Many people from all walks of life arrive at court with fears or worries about how our justice system will treat them. I often have victims and their family members, as well as defendants and their family members, in my courtroom. I make every effort to show those who appear in my courtroom that I recognize how important the case is to them and that I see, hear, and respect them when it is their turn to address me, regardless of their background.

c. How would we measure the end of systemic racism?

Response: That is a question for policymakers and social scientists. If presented with a case involving a question of measuring whether a pattern of racial discrimination was occurring, I would evaluate the case based on the individual factual record and any expert testimony or other evidence presented, as well as the applicable law.

d. Would it be complete equality of outcome among all racial groups?

Response: Please see my response to Question 43(c).

44. You also signed a document protesting the California Supreme Court Committee on Judicial Ethics Opinions decision that "discouraged participation" by California judges from participating in public demonstrations, concluding that "it is fraught with ethical risk." You were a signatory to a document that argued "Judges are not members of a legal monastery who should be sequestered from engaging their community on critical issues of law, equity and equality."

a. How can judges be neutral arbiters of law when they engage in public protests?

Response: Judges can and should publicly support the core constitutional principle that all people are equal under the law, which is a principle beyond legal dispute. An example provided in the article is a judge holding the hand of her schoolchild in a school march supporting general principles of equality and justice. The article onto which I signed reflected the view that such actions enhance, rather than detract from, public confidence in the judiciary by reaffirming the judicial commitment to equal justice. At the same time, as noted in the cited article, to preserve their impartiality, judges must be very careful in any public setting and may not publicly comment on or attend protests supporting positions on issues that could come before them or other courts.

b. Are there ethical concerns with judges participating in contentious debates?

Response: Yes, depending on the topic of the debate. Among other ethical restrictions, judges may not make public statements concerning issues that could come before them or other courts, and may not comment on politics.

c. In your opinion, would it proper for a judge to engage in a protest concerning a political cause, only to oversee a suit regarding that same cause the following day?

Response: No.

45. You authored a number of college writings that are quite troubling. In a piece published in *Perspective* in December 1998 you wrote, "felt screwed over by a religious right that perverted my faith in support of bigotry, a religious right whose homophobic views tacitly encouraged its followers to violate the most sacred Christian law—to love others as we love our God." You also stated, "The problem with the Christian Coalition is not that they are Bible-thumpers (there are personal beliefs that often result from religious experiences) but that they're bigots."

a. Do you still believe people on the religious right are bigots?

Response: No. I wrote that when I was 20 years old, in an emotional reaction to the death of Matthew Shepard, and it reflected my limited life experience. I'm now more than 24 years older than I was when I wrote those words, and I am proud to have friends, colleagues, and associates who have a wide range of religious, political, and personal views. And, in general, my adult life over the last two decades as a wife, mother, and member of our local church has enriched my understanding of the human experience, as has my professional career as a civil litigator, federal prosecutor, and judge. In my four years as a judge, I have adjudicated all cases before me without bias of any kind, and I would do the same on the federal bench, if confirmed.

b. How old were you when you wrote this article?

Response: I was 20 years old.

c. In *Obgergefell v. Hodges*, Justice Kennedy wrote, "Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here." In your opinion, are people who hold views opposing same-sex marriage decent and honorable?

Response: I agree with Justice Kennedy's statement quoted above.

46. You also authored a piece in the January 1997 issue of *Perspective* entitled "*The New Red Scare: Western Prejudices Against Islamic Fundamentalism*" which caused to you to issue a subsequent apology editorial in *The Harvard Crimson* on February 5, 1997 for implying "that all Orthodox Jews are terrorists or religious lunatics."

a. Was your article anti-Semitic?

Response: No. In my letter to editor in the *Crimson*, I stated that my *Perspective* article had been misinterpreted to imply that I "somehow believe[d]" the above claims when "I meant nothing of the sort."

In general, I no longer agree with the points that I made in the January 1997 *Perspective* article, which reflected a juvenile attempt to draw false equivalencies between movements or events that are clearly not the same. I wrote that article 26 years ago, when I was 18 years old and in my freshman year of college. It was before I went to law school or had any type of professional career and more than twenty years before I became a judge. In my work as a federal prosecutor, I had the honor and privilege of representing the United States in investigations that concerned national security. I am proud of my work supporting and defending our country in that way. As a judge, if I were confronted with a case alleging terrorist acts or material support for terrorism, I would judge it fairly, impartially, and without bias, based on the factual record, the evidence presented, and the binding legal precedents.

b. How old were you when you wrote that article?

Response: I was 18 years old.

Senator Ben Sasse
Questions for the Record for Rita F. Lin
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
November 30, 2022

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

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

   Response: My judicial philosophy is to resolve the case or controversy before me in a manner that is diligent, open-minded, and fair. I diligently review the applicable law, factual record, evidence, and written submissions of the parties. I listen with an open mind to the parties' arguments and the evidence presented. Then, I provide the parties with a prompt decision that clearly explains my ruling and the reasoning behind it, as well as any issues that I have not decided. For each case that comes before me, I set a tone in the courtroom that treats litigants with respect and dignity and conveys my recognition of how important the case is to the individual parties.

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

   Response: I do not use any particular label to describe my approach to interpreting the law. If confirmed, I would follow the interpretive methods that the Supreme Court and Ninth Circuit have used to interpret the law at issue, including the application of the law's original public meaning where appropriate. *See, e.g., N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

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

   Response: I do not use any particular label to describe my approach to interpreting the law. If confirmed, my approach to interpreting legal texts would begin with the text itself and any applicable Supreme Court and Ninth Circuit precedents. If the meaning of the text is clear and unambiguous, my analysis would stop there, unless dictated otherwise by precedent.

5. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

   Response: I believe the Constitution has an enduring fixed quality that does not change over time, though it is applied to new circumstances in our modern times. The Constitution may be changed only through the amendment process provided in Article V.

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

   Response: While I am not sufficiently familiar with the jurisprudence of each Supreme Court Justice over that time period to identify whose I most admire, Justice Kagan was my first-year Civil Procedure professor in law school, and I have always admired her ability to explain complex legal concepts in a way that everyone can understand. In issuing my rulings, I strive to live up to her example of communicating in a clear, plainspoken way.

7. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?**

   Response: If there is no controlling Supreme Court precedent, an appellate court cannot overturn its own precedent unless the court is sitting *en banc* or the precedent is "clearly irreconcilable" with an intervening decision of the Supreme Court. *See* Fed. R. App. P. 35(a)(1); *Miller v. Gammie*, 335 F.3d 889, 892-93 (9th Cir. 2003) (en banc).

8. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?**

   Response: Please see my response to Question 7.

9. **What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?**

   Response: My interpretation of a statute begins with the statutory text itself and any binding precedents interpreting that text. If the meaning of the text is clear and unambiguous, my analysis stops there. If the text is ambiguous, and there is no binding precedent concerning the correct interpretation, I would employ canons of statutory construction and consult binding precedents interpreting analogous texts. If that did not resolve the issue, I would consult persuasive authority from other circuits, and I would employ the methods of interpretation used by the Supreme Court and Ninth Circuit to interpret the text at issue or similar texts, which can include legislative history. General principles of justice would generally not play a role in statutory interpretation, beyond the framework described above.

10. **If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?**

Response: No. A defendant's racial or ethnic group is not a factor that may be considered in sentencing under 18 U.S.C. § 3553(a).

Senator Josh Hawley
Questions for the Record

Rita Lin
Nominee, Northern District of California

1. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

    a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

    Response: Sentencing is a highly individualized, fact-specific determination. If confirmed, I would apply binding precedents of the Supreme Court and the Ninth Circuit regarding sentencing, and I would consider the factors outlined in 18 U.S.C. § 3553(a); the Sentencing Guidelines calculation; the recommendations of the prosecution, defense, and Probation Office; any statements from victims; any statement by the defendant; and the facts and circumstances of the individual case.

    b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

    Response: Please see my response to Question 1(a).

    c. **The enhancement for offenses involving the use of a computer**

    Response: Please see my response to Question 1(a).

    d. **The enhancements for the number of images involved**

    Response: Please see my response to Question 1(a).

2. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

    a. **Do you agree that the penalties should be aligned?**

    Response: It is Congress's decision what penalties should apply to crimes. As a sitting judge and a judicial nominee, it would be inappropriate to express an opinion on my personal policy preferences about what laws Congress should

pass. If confirmed, I will issue sentences in accordance with the laws enacted by Congress and the applicable binding precedents.

b. If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?

Response: Please see my response to Question 2(a).

c. If an offender before you is charged only with possession even though uncontested evidence shows the offender also committed the crime of receiving child pornography, will you aim to sentence the offender to between 5 and 10 years?

Response: If confirmed, to determine whether to consider uncharged criminal conduct in sentencing, I would analyze whether it is "relevant conduct" within Section 1B1.3 of the United States Sentencing Guidelines Manual, and apply any binding precedents of the Supreme Court and the Ninth Circuit on that issue. With respect to what the ultimate sentence would be, please see my response to Question 1(a).

3. 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 cannot speculate about Justice Marshall's philosophy or his understanding of the judicial oath. I believe that a federal judge is duty-bound to apply the law, including binding precedents, in every case regardless of one's own policy preferences, and that is what I would do if confirmed.

4. Do you believe that the Supreme Court's ruling in *Dobbs* v. *Jackson Women's Health Organization* is settled law?

Response: Yes.

5. What is the standard for each kind of abstention in the court to which you have been nominated?

Response: The most common forms of abstention are discussed below.

Pullman abstention is appropriate if all three of the following criteria are met: "(1) the federal plaintiff's complaint must require resolution of a sensitive question of federal constitutional law; (2) that question must be susceptible to being mooted or narrowed by a definitive ruling on state law issues; and (3) the possibly determinative state law must be unclear." *United States v. Morros*, 268 F.3d 695, 703-04 (9th Cir. 2001); *see also R.R. Comm'n of Tex. v. Pullman*, 312 U.S. 496 (1941). In those situations, *Pullman* requires the federal court to abstain from deciding the federal issue while the parties seek a determination from the state court as to the state law issues. *Id.*

Younger abstention applies where a federal suit would interfere with ongoing state proceedings. Such abstention is appropriate where (1) there is an ongoing state judicial proceeding; (2) the proceeding implicates important state interests; (3) there is an adequate opportunity in the state proceedings to raise constitutional challenges; and (4) the requested relief seeks to enjoin or has the practical effect of enjoining the ongoing state judicial proceeding. *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018); *see also Younger v. Harris*, 401 U.S. 37 (1971).

Burford abstention applies upon a showing "(1) that the state has concentrated suits involving the local issue in a particular [state] 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); *see also Burford v. Sun Oil Co.*, 319 U.S. 315, 332 (1943).

Colorado River abstention applies when a federal court abstains in favor of a concurrent state court proceeding due to considerations of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 818 (1976). The Ninth Circuit has articulated eight factors that the federal court should consider in deciding whether to abstain under *Colorado River*: "(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." *Seneca Ins. Co. v. Strange Land*, 862 F.3d 835, 841-42 (9th Cir. 2017).

Although not formally a doctrine of abstention, the *Rooker-Feldman* doctrine refers to the related concept that the lower federal courts do not have subject matter jurisdiction to hear cases that are effectively appeals from final state court judgments. Accordingly, federal district courts may not adjudicate claims that are "inextricably intertwined" with those already resolved by the state court. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). *Rooker-Feldman* applies "when the federal plaintiff both asserts as her injury legal error or errors by the state court *and* seeks as her remedy relief

from the state court judgment." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

6. **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.

7. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

   Response: If confirmed, I will follow fully and faithfully all Supreme Court and Ninth Circuit precedent as to the interpretive tools required to analyze constitutional provisions, including applying the original public meaning where appropriate. *See, e.g., N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

8. **Do you consider legislative history when interpreting legal texts?**

   Response: Sometimes. My interpretation of any legal text begins with the text itself and any binding precedents interpreting that text. If the meaning of the text is clear and unambiguous, my analysis stops there. If the text is ambiguous, and there is no binding precedent concerning the correct interpretation, I would employ canons of statutory construction and consult binding precedents interpreting analogous texts. If that did not resolve the issue, I would consult persuasive authority from other circuits, and I would employ the methods of interpretation used by the Supreme Court and Ninth Circuit to interpret the text at issue or similar texts, which can include legislative history.

   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: In any analysis of legislative history, I would follow Supreme Court and Ninth Circuit precedent to determine what legislative history should be consulted and the relative weight of that legislative history. For example, the Supreme Court has held that committee reports are a better source to determine legislative intent than individual legislators' floor statements. *See Garcia v. United States*, 469 U.S. 70 (1984). The Supreme Court has also cautioned that failed legislative proposals are "particularly dangerous" to rely upon and are not generally probative of legislative intent.

United States v. Craft, 535 U.S. 274, 285 (2002). In general, the text of the statute is the best evidence of what the legislature intended.

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: Our constitution is a domestic document, and I would rely upon domestic law to interpret it, unless Supreme Court or Ninth Circuit precedents counseled reliance upon foreign law in the context of the constitutional provision at issue.

9. 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 petitioner bears the burden (1) to show that the method of execution presents a "substantial risk of serious harm," which refers to "severe pain over and above death itself," and (2) to identify an alternative method that is "feasible, readily implemented, and in fact significantly reduce[s]" the risk of harm involved. *Nance v. Ward*, 142 S. Ct. 2214, 2220 (2022) (*quoting Glossip v. Gross*, 576 U.S. 863, 877 (2015)) (alterations in original).

10. 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.

11. 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 Supreme Court has held that substantive due process does not protect a "freestanding right to DNA evidence untethered from the [defendant's] liberty interests." *Dist. Attorney's Office for the Third Judicial Dist. v. Osborne*, 557 U.S. 52 (2009). The Supreme Court has further held that procedural due process is violated only when state procedures regarding postconviction access to DNA offend "some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental" or transgress "any recognized principle of fundamental fairness in operation." *Id.* at 69; *see also Morrison v. Peterson*, 809 F.3d 1059 (9th Cir. 2015) (applying *Osborne*).

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.

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 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: Strict scrutiny applies to any government burden placed on the free exercise of religion unless the government regulation is a neutral and generally applicable. *Empl. Div., Dep't of Hum. Res. of Ore. v. Smith*, 494 U.S. 872 (1990). A law is not neutral and generally applicable if:

> (1) the object or purpose of the law is suppression of religion or religious conduct, *see Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020); *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022); *and Carson v. Makin*, 142 S. Ct. 1987, 1997 (2022);
>
> (2) the government acts in a manner hostile toward religious belief, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018);
>
> (3) the law is subject to discretionary individualized exemptions, *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021); or
>
> (4) the law treats any comparable secular activity more favorably than religious exercise, *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021).

To survive strict scrutiny, the government bears the burden to show that its regulation is narrowly tailored to serve a compelling government interest.

14. 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: Strict scrutiny would apply to any law that either (1) treats religious organizations or religious people non-neutrally or (2) singles them out for discrimination with rules not generally applicable to others. *Church of Lukumi Bablau Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993); *see also Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). Such a law would be permissible only if narrowly tailored to serve a compelling government interest. "A law that targets religious conduct for distinctive treatment or

advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases." *Lukumi*, 508 U.S. at 546. Please see my response to Question 13 for additional applicable precedents.

15. 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 Ninth Circuit has held that religious beliefs are held sincerely, and thus within the protection of the Free Exercise Clause, so long as they are not "obviously shams and absurdities" or "patently devoid of religious sincerity." *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994). Courts are not to rely on "a judicial perception of the particular belief or practice in question," and "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981).

16. 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: The Supreme Court held in *District of Columbia v. Heller* that the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation." 554 U.S. 570, 592 (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.

17. 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: Justice Holmes' dissent reflects the notion that the "Constitution is not intended to embody a particular economic theory." *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). I agree that judges should not view interpretation of the Fourteenth Amendment, or any other law, as a method of social engineering, and that judges should make their decisions fairly and impartially without regard to personal policy preferences.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), overruled *Lochner*. If confirmed, I would follow the binding precedents of the Supreme Court, which includes *West Coast Hotel* but not *Lochner*.

18. 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: "If a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). If confirmed, I would fully and faithfully apply all Supreme Court precedents.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: Not applicable.

19. 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 would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully apply all precedents of the Supreme Court and the Ninth Circuit as to what constitutes a monopoly, regardless whether they align with Judge Hand's assessment.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my response to Question 19(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: I am not aware of Supreme Court precedent specifying a minimum market share for a monopoly under Section 2 of the Sherman Act. The Ninth Circuit has held that "a market share of less than 50 percent is presumptively insufficient to establish market power." *Rebel Oil Co., Inc. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1438 (9th Cir. 1995). By comparison, 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). That said, the Ninth Circuit has expressed reluctance "to apply bright-line rules regarding market share" and relies on analyzing "certain telltale factors in the relevant market: market share, entry barriers and the capacity of existing competitors to expand output." *Rebel Oil*, 51 C.3d at at 1438 n. 10. If confirmed, I would fully and faithfully apply the antitrust laws and precedents on monopolization to the individual factual record and evidence in the case before me.

20. Please describe your understanding of the "federal common law."

Response: There is "no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Generally, in diversity cases, the federal courts apply state substantive law, and in federal question cases, the federal courts apply federal statutory law. There are only a few limited areas of substantive federal common law where there is no statutory law and decisional common law is "necessary to protect uniquely federal interests," such as in admiralty cases and certain controversies between States. *See Rodriguez v. FDIC*, 140 S. Ct. 713, 717 (2020).

21. 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: State law governs the scope of a state constitutional right. Accordingly, "the views of the State's highest court with respect to state law are binding on the federal courts." *Wainwright v. Goode*, 464 U.S. 78, 84 (1983).

a. Do you believe that identical texts should be interpreted identically?

Response: Generally, yes. However, the same text can mean different things if adopted by different government actors or enacted at different times. Also, federal and state courts may interpret the same text differently, and state court decisions are binding on federal courts with respect to the interpretation of state law.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: State constitutions may provide greater protections to its citizens than provided by the United States Constitution.

22. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954), was correctly decided?

Response: Yes. As a sitting judge and judicial nominee, I generally refrain from expressing an opinion regarding whether a particular case was correctly decided. However, because it is unlikely that I will ever be asked to adjudicate the constitutionality of laws requiring racial segregation, I can state my view that *Brown* was correctly decided.

23. Do federal courts have the legal authority to issue nationwide injunctions?

Response: Federal Rule of Civil Procedure 65 describes the scope of federal courts' authority to issue injunctions. In general, injunctive relief is an "extraordinary remedy." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). "[I]njunctive 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). The Ninth Circuit has held that "although there is no bar against nationwide relief in federal district court or circuit court, such broad relief must be necessary to give prevailing parties the relief to which they are entitled." *California v. Azar*, 911 F.3d 558, 582 (9th Cir. 2018) (finding the issuance of a nationwide injunction failed the required standard and was an abuse of discretion). If confirmed and faced with a case where a party sought a nationwide injunction, I would fully and faithfully apply Supreme Court and Ninth Circuit precedent to the factual record and evidence before me.

a. If so, what is the source of that authority?

Response: Please see my response to Question 23.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Please see my response to Question 23.

24. 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 23.

25. What is your understanding of the role of federalism in our constitutional system?

Response: The Constitution created a federal government of limited, enumerated powers. Those powers that were not delegated to the federal government have been reserved to the states and the people under the Tenth Amendment. This division of power between the federal government and the states is an essential bulwark of liberty. "It assures a

decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

26. 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 5.

27. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: Generally, damages provide a remedy for a past harm, whereas injunctive relief is designed to prevent future harm. I believe litigants should choose which form of relief they seek, and the court should determine whether the facts and the law authorize that relief.

28. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: The Supreme Court has held that the Fifth and Fourteenth Amendments protect those substantive due process rights that are "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. Glucksburg*, 521 U.S. 702, 720-21 (1997).

29. 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 responses to Questions 13 and 15.

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 Free Exercise Clause "protects not only the right to harbor religious beliefs inwardly and secretly" but also protects "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v.*

Bremerton Sch. Dist., 142 S. Ct. 2407, 2421 (2022). That extends beyond the right to worship.

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 13.

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 15.

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) "applies to all Federal law, and the implementation of that law, whether statutory or otherwise, … unless such law explicitly excludes such application by reference" to the Act. 42 U.S.C. § 2000bb-3.

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.

30. 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 Justice Scalia's statement or its context. However, I understand it to mean that if a judge fairly and impartially sets aside personal beliefs and enters rulings solely based on applicable law and the factual record, that judge will at least occasionally reach results that are at odds with the judge's own personal policy preferences. If a judge never encounters that situation, it can be a sign that the judge is either deliberately or unknowingly allowing personal policy preferences to dictate judicial decisions, in violation of the judicial oath.

31. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

Response: Yes. In my role as an advocate while in private practice, I worked on matters in which my law firm represented clients who challenged the constitutionality of federal and state laws prohibiting recognition of same-sex marriages.

a. If yes, please provide appropriate citations.

Response: I worked on a matter in which my law firm represented federal employee Karen Golinski in her constitutional challenge to the Defense of Marriage Act. *Golinski v. Office of Personnel Management*, 587 F.3d 956 (9th Cir. 2009) (Kozinski, J.); 781 F. Supp. 2d 967 (N.D. Cal. 2011) (White, J.); 824 F. Supp. 2d 968 (N.D. Cal. 2012) (White, J.); 724 F.3d 1048 (9th Cir. 2013) (Alarcón, Thomas, Berzon, JJ.); 570 U.S. 931 (2013). I also worked on matters in which my law firm represented various professors as *amici curiae* in constitutional challenges to state laws concerning same-sex marriage. *Bishop v. Smith*, 760 F.3d 1070, 1074 (10th Cir. 2014); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014); *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014); *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014).

32. 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.

33. Do you believe America is a systemically racist country?

Response: I understand the term "systemic racism" to refer to patterns of racial discrimination. America is the best country in the world, and my parents immigrated here because it is a beacon of freedom and opportunity. Unfortunately, incidents of racial discrimination and racially motivated hate crimes do persist in modern times in our country, and can occur in patterns. I do not have data on the frequency or prevalence of those patterns. When such patterns arise, it is important for those issues to be discussed and for policymakers to consider how to address them. As a judge, I am focused on the individual case or controversy before me, rather than on larger systemic issues. My focus is on treating everyone in my courtroom fairly and without bias, regardless of their background.

34. Have you ever taken a position in litigation that conflicted with your personal views?

Response: Yes.

35. How did you handle the situation?

Response: I set aside my personal views and zealously advocated for my client, advancing the arguments that best supported its position, consistent with my ethical duty as an attorney.

36. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

37. Which of the Federalist Papers has most shaped your views of the law?

Response: There is no particular Federalist Paper that has most shaped my views of the law.

38. Do you believe that an unborn child is a human being?

Response: *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), held that this is a "profound moral issue" and returned the issue of abortion to the people and their elected representatives rather than the federal courts. As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on this issue.

39. 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: No.

40. 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: During the consideration of my application for this position, no one from the White House or Department of Justice asked for me to provide my views on any legal issue or question that could come before me as a judge.

41. Do you currently hold any shares in the following companies:

a. Apple?

b. Amazon?

c. Google?

d. Facebook?

e. Twitter?

Response: No. I do have investments in mutual funds that hold stocks, but am not aware of the specific securities held in those funds.

42. Have you ever authored or edited a brief that was filed in court without your name on the brief?

Response: Yes. In 2008, as a law firm associate at Morrison & Foerster, I drafted briefs in connection with cross-motions for summary judgment in a software copyright dispute, but my name did not appear on the pleadings because I was only temporarily helping in the matter and could not be permanently assigned due to competing case obligations. That is the only instance that I can recall in which I authored or edited a brief that was filed in court without my name on it.

a. If so, please identify those cases with appropriate citation.

Response: *SCO Group v. Novell Inc.* 2:04-cv-00139 (D. Utah).

43. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Not applicable.

44. 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: At the outset of my testimony before the Senate Judiciary Committee, I took an oath to tell the truth. I understand the same obligation extends to these questions for the record. I have attempted to answer each of these questions truthfully and to the best of my ability and in a manner consistent with my ethical obligations as a sitting judge and under the Code of Conduct for United States Judges as it applies to judicial nominees.

Questions from Senator Thom Tillis
for Rita F. Lin
Nominee to be United States Judge for the Northern District of California

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

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary defines "judicial activism" as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." *Black's Law Dictionary* (11th ed. 2019). I do not consider judicial activism appropriate.

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.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Yes. My duty is to apply the law to the facts before me, without regard to my personal views. That is what I always wanted from judges as an advocate, and it is the backbone of our entire system of law. I do not find it difficult to reconcile myself to doing my duty, because my commitment to the rule of law far outweighs any policy preference I might have. That is the oath I have sworn, and I take it very seriously.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: If confirmed, I will apply all precedents of the Supreme Court and the Ninth Circuit to the facts of each case before me. In the Second Amendment context, I would fully and faithfully follow the Supreme Court's holdings in *District of Columbia v. Heller*, 554

U.S. 470 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), as well as any other applicable precedent.

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: If confirmed, I would evaluate the factual record and evidence presented to me and apply any applicable precedent of the Supreme Court and the Ninth Circuit. Depending on the facts, that could include *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), on the scope of the Second Amendment's protections regarding the right to keep and bear arms. It could also include *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (per curiam), on the application of COVID-19 restrictions to burden 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: The Supreme Court has held that qualified immunity in a suit under 42 U.S.C. §1983 applies when the plaintiff has failed to demonstrate both (1) that the official violated a statutory or constitutional right; and (2) that the right was clearly established at the time of the violation. *Saucier v. Katz*, 533 U.S. 194, 200 (2001). "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* at 202.

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: That issue is best left to policymakers. As a sitting judge and a judicial nominee, it would be inappropriate for me to comment on an issue that might come before me. If confirmed, I would fully and faithfully apply Supreme Court and Ninth Circuit precedent in any case involving potential issues of qualified immunity.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see my response to Question 10.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: The Supreme Court has held that 35 U.S.C. § 101, which governs patent eligibility, contains an implicit exception for laws of nature, natural phenomena, and abstract ideas. *Alice Corp. v. CLS Bank International*, 573 U.S. 208, 216 (2014). Under Supreme Court precedent applying that exception, claims to the "building blocks" of human ingenuity are ineligible for patent protection, but claims integrating those building blocks into something more can "transform the nature of the claim" into one that is eligible for protection. *Id.* at 217. Specifically, the Court considers whether the elements of the claim individually, and as an ordered combination, disclose an "inventive concept" that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept alone. *Id.* at 217-18; *see also Bilski v. Kappos*, 561 U.S. 593 (2010); *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66 (2012). As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case or body of cases was correctly decided, or regarding an issue that could come before me. If confirmed and confronted with an issue of patent eligibility, I will apply Section 101, and any applicable Supreme Court and Federal Circuit precedents, to the case or controversy presented to me.

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?

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?

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?

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?

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?**

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?**

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?**

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?**

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?**

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: The Supreme Court has held that 35 U.S.C. § 101, which governs patent eligibility, contains an implicit exception for laws of nature, natural phenomena, and abstract ideas. *Alice Corp. v. CLS Bank International*, 573 U.S. 208, 216 (2014). Under Supreme Court precedent applying that exception, claims to the "building blocks" of human ingenuity are ineligible for patent protection, but claims integrating those building blocks into something more can "transform the nature of the claim" into one that is eligible for protection. *Id.* at 217. Specifically, the Court considers whether the elements of the claim individually, and as an ordered combination, disclose an "inventive concept" that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept alone. *Id.* at 217-18; *see also Bilski v. Kappos*, 561 U.S. 593 (2010); *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66 (2012). As a sitting judge and a judicial nominee, it would be inappropriate for me to comment on issues that might come before me, and the fact patterns described in these hypotheticals could bear relation to cases that could come before me if confirmed. If I am confirmed and confronted with an issue of patent eligibility, I will apply Section 101, and any applicable Supreme Court and Federal Circuit precedents, to the case or controversy presented to me.

14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding the public policy effects of a particular case or line of cases, or regarding issues that could come before me. If confirmed, I would follow the precedent established by the Supreme Court and the Federal Circuit concerning the issues of patent eligibility.

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: I worked on two matters concerning software copyrights while in private practice at Morrison & Foerster. In 2008, I represented Autodesk in its suit against Assimilate, Inc., for copyright infringement. *Autodesk Canada Co. v. Assimilate, Inc.*, 08-587-SLR-LPS (D. Del.). I managed the case on a day-to-day basis, including fact development, witness interviews, working with experts, drafting the initial complaint, and motions practice. Also in 2008, I worked on *SCO Group v. Novell Inc.*, No. 2:04-cv-00139 (D. Utah), a high-profile copyright litigation in which SCO and Novell asserted competing claims of copyright ownership over the source code to the Unix operating system. I drafted a series of

briefs on behalf of Novell in connection with cross-motions for summary judgment. It is possible that I also worked on a few other software copyright matters at Morrison & Foerster, but I no longer recall any specific matters beyond the two listed.

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: In 2002, while in law school, I wrote a case summary regarding a suit by motion picture studios to take down source code and object code enabling decryption of encoded DVDs under the Digital Millennium Copyright Act. *Recent Case: Second Circuit Classifies the Posting and Linking of Computer Code as Expressive Conduct Rather than Pure Speech*, 115 Harv. L. Rev. 2042 (2002). A copy was attached to my questionnaire.

c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?

Response: In my eighteen years as a civil litigator, federal prosecutor, and state court judge, I do not recall having handled a matter concerning the issue of intermediary liability for online service providers.

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: While in private practice, in 2007, I worked as part of a team of attorneys on a *pro bono* matter involving a defamation suit in state court against the creator of a parody blog, which raised First Amendment issues. I also wrote the case summary mentioned in Question 15(b) above. Other than that, in my eighteen years as a civil litigator, federal prosecutor, and state court judge, I do not recall having addressed the issues mentioned in the question.

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: My interpretation of any statutory text begins with the text itself and any binding precedents interpreting that text. If the meaning of the text is clear and unambiguous, my analysis stops there. If the text is ambiguous, and there is no binding precedent concerning the correct interpretation, I would employ canons of statutory construction and dictionary definitions. I would also consult binding precedents interpreting analogous statutory texts. If that did not resolve the issue, I would consult persuasive authority from other jurisdictions. Finally, if none of those sources resolved the issue, I would follow the interpretive methods that the Supreme Court and Ninth Circuit have used to interpret the statute at issue, which could include consulting the legislative history.

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: If confirmed, I would apply the precedents of the Supreme Court and the Ninth Circuit regarding the level of deference afforded to an agency interpretation of its authorizing statute. If the statutory language is clear and unambiguous, the analysis would stop there. If the statutory language is ambiguous, I would generally defer to the agency interpretation if it is reasonable and was adopted through formal rulemaking procedures, unless an exception to *Chevron* deference applied (*e.g.*, the non-delegation doctrine). *See Chevron U.S.A. Inc. v. Nat'l Res. Def. Council, Inc.*, 468 U.S. 837 (1984). Informal agency advice and analysis would generally be subject to deference only to the extent that they are persuasive. *See Inhale, Inc. v. Starbuzz Tobacco Inc.*, 755 F.3d 1038, 1041-42 (9th Cir. 2014) ("When interpreting the Copyright Act, we defer to the Copyright Office's interpretations in the appropriate circumstances. Because *Chevron* deference does not apply to internal agency manuals or opinion letters, we defer to the Copyright Office's views expressed in such materials only to the extent that those interpretations have the power to persuade.") (internal citations and quotations omitted).

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: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on an issue that could come before me. If confirmed and faced with a scenario like the one described, I will apply Supreme Court and Ninth Circuit precedents to the factual record and evidence before me.

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: If confirmed, and faced with a question about the interpretation of the DMCA, I would begin by evaluating any Supreme Court or Ninth Circuit authority interpreting the provision at issue. If there were no such authority, I would examine the text itself. If the text is clear and unambiguous, my analysis would stop there. If the text is ambiguous, and there is no binding precedent concerning the correct interpretation, I would examine Supreme Court and Ninth Circuit precedent interpreting the DMCA and follow whatever interpretive methods those precedents employed. I would also look to persuasive authority from other circuits, as well as canons of interpretation and dictionary definitions.

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: Please see my response to Question 17(a).

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: In the district to which I am nominated, the Clerk of the Court randomly and blindly assigns cases to particular divisions and judges pursuant to the Assignment Plan of the Court, set forth in General Order No. 44. If confirmed, I will fully comply with the Assignment Plan of the Court, venue rules, and any other applicable precedents.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: Please see my response to Question 18(a).

c. Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?

Response: I am unfamiliar with the term "forum selling." However, I do not think it is appropriate for judges to take proactive steps for the purpose of attracting a

particular type of case or litigant. A judge should decide cases fairly and impartially based on the factual record and applicable law.

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: I commit that, as a judge, I will not take proactive steps for the purpose of attracting any particular type of case or litigant.

19. In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.

a. What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?

Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on an issue that is currently before another court or could come before another court. If confirmed, I will fully and faithfully apply all venue rules and applicable precedents to any venue issues that come before me.

b. Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?

Response: Please see my response to Question 19(a).

20. When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?

Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on an issue that could come before me or another court. If confirmed, I will fully and faithfully apply all venue rules and applicable precedents to any venue issues that come before me.

a. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: Please see my response to Question 20.

b. To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a

local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: Please see my response to Question 20.

21. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

a. If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?

Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on an issue that is currently before another court or could come before another court. If confirmed, I will fully and faithfully apply all applicable precedents in the cases that come before me.

b. Would five mandamus reversals be sufficient? Ten? Twenty?

Response: Please see my answer to Question 21(a).

Senator Chuck Grassley, Ranking Member
Questions for the Record
Magistrate Judge Ramon Ernesto Reyes, Jr.
Judicial Nominee to the U.S. District Court for the Eastern District of New York

1. **In *Johnson v. Bellnier*, a state jury had convicted Johnson of depraved indifference murder but acquitted him of intentional murder. In his petition for habeas relief, Johnson admitted to the intentional killing of his victim. He argued that his conviction for depraved indifference murder had to be vacated as legally insufficient under New York law because his intent to kill the victim meant no jury could have convicted him of depraved indifference murder. Because Johnson admitted that he had procedurally defaulted on his legal insufficiency argument, he argued that his case fell within the "miscarriage of justice" equitable exception—which is reserved for when a violation of a constitutional right results in an "actually innocent" person being convicted. You granted his habeas petition, finding that it was a miscarriage of justice that he was convicted of depraved indifference murder after admitting he committed intentional murder. The Second Circuit reversed, explaining that "[a] reasonable jury could have concluded that Johnson's actions illustrated depraved indifference not only to Chandler, but also to any other people on the street that could have been struck by his bullets. Similar to another recent decision, *Garbutt v. Conway*, which also contemplated the possibility of an intentional murder, 'a reasonable jury could equally have found that [Johnson] had struck out ... without specifically intending to cause death, but with an awareness that his conduct could have deadly consequences.'" *Johnson v. Bellnier*, 508 F. App'x 23, 26 (2d Cir. 2013) (quoting 668 F.3d 79, 82 (2d Cir.2012)). Please explain why you believed a miscarriage of justice occurred and why you believed no "reasonable jury" could've concluded that the depraved indifference standard had been met.**

   Response: Respectfully, I detailed my reasoning in my report and recommendation, *Johnson v. Bellnier*, No. 09–CV–00381 (KAM)(RER), 2010 WL 7100915 (E.D.N.Y. Nov. 8, 2010), which the district court adopted, 2011 WL 3235708 (E.D.N.Y. July 27, 2011). I respect the decision of the United States Court of Appeals for the Second Circuit and will apply it going forward if a similar issue arises in a subsequent case, as I would so apply all binding Supreme Court and Second Circuit precedent.

2. **Under what circumstances can federal judges add to the list of fundamental rights the Constitution protects?**

   Response: In *Washington v. Glucksburg*, 521 U.S. 702 (1997), the Supreme Court held that certain unenumerated rights are protected by the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution. Such unenumerated rights are objectively "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were

sacrificed." *Id.* at 720–21. As a sitting United States Magistrate Judge and a judicial nominee it would be inappropriate for me to comment on the specific circumstances under which federal judges can add to the list of fundamental rights the Constitution protects. If confirmed, I will strictly adhere to Supreme Court and Second Circuit precedent as to which rights the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution recognize and protect.

3. **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: I disagree.

4. **Please define the term "living constitution."**

   Response: The term "living constitution" refers to the doctrine "that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Black's Law Dictionary (11th ed. 2019). I do not use a particular label to characterize my judicial philosophy. If confirmed, I will apply binding Supreme Court and Second Circuit precedent regarding issues of constitutional interpretation.

5. **Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

   Response: I am not familiar with this statement by Justice Ketanji Brown Jackson or the context in which it was made. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent regarding issues of constitutional interpretation.

6. **Do parents have a constitutional right to direct the education of their children?**

   Response: The Supreme Court has noted that the Due Process Clause of the Fourteenth Amendment protects a parent's right "to direct the education and upbringing of one's children." *Washington v. Glucksburg*, 521 U.S. 702, 720 (1997) (citing *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)).

7. **Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.**

   Response: The allocation of resources by local governments is a matter best left to policymakers. As a sitting United States Magistrate Judge and a judicial nominee, it would inappropriate for me to opine or comment on this issue.

8. **Are law enforcement partnerships key to preventing acts of terror?**

   Response: The allocation of resources among and between law enforcement entities is a matter best left to policymakers. As a sitting United States Magistrate Judge and a judicial nominee, it would inappropriate for me to opine or comment on this issue.

9. **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: Federal judges must apply the provisions of the Bail Reform Act, 18 U.S.C. §§ 3141, *et seq.* Ensuring the safety of the community is one of the Bail Reform Act factors that federal judges consider in making every bail determination. As a United States Magistrate Judge and a judicial nominee, it would be inappropriate for me to opine or comment on this issue.

10. **Is the right to petition the government a constitutionally protected right?**

    Response: The right "to petition the government for a redress of grievances" is protected by the First Amendment to the United States Constitution.

11. **What role should empathy play in sentencing defendants?**

    Response: Sentencing is confined by the factors set forth in 18 U.S.C. § 3553(a). Empathy is not one of the factors listed in 18 U.S.C. § 3553(a).

12. **Do you agree with the following statement: "Not everyone deserves a lawyer, there is no civil requirement for legal defense"?**

    Response: I am unfamiliar with this quote. Nevertheless, there is no constitutional right to counsel in civil cases.

13. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

    a. **Was *Brown v. Board of Education* correctly decided?**

       Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me. That being said, it is generally understood that *Brown v. Board of Education* was

"correctly decided" as it has become so firmly rooted in American jurisprudence and the issue is not likely to come before the Court again.

b. **Was *Loving v. Virginia* correctly decided?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me. That being said, it is generally understood that *Loving v. Virginia* was "correctly decided" as it has become so firmly rooted in American jurisprudence and the issue is not likely to come before the Court again.

c. **Was *Roe v. Wade* correctly decided?**

Response: The Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health*, 142 S. Ct. 2228 (2022). As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me.

d. **Was *Planned Parenthood v. Casey* correctly decided?**

Response: The Supreme Court overturned *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health*, 142 S. Ct. 2228 (2022). As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me.

e. **Was *Griswold v. Connecticut* correctly decided?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me.

f. **Was *Gonzales v. Carhart* correctly decided?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me.

g. **Was *McDonald v. City of Chicago* correctly decided?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me.

h. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me.

i. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me.

j. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me.

14. **Is threatening Supreme Court justices right or wrong?**

Response: Depending upon the specific facts, threatening Supreme Court Justices or other judges or public officials could violate a number of state and federal statutes, including 18 U.S.C. § 115.

15. **Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: 18 U.S.C. § 1507 makes it unlawful to picket, parade, or demonstrate "in or near" a court building or the residence of a judge, juror, witness, or court officer, "with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty."

16. **Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: I am unaware of any Supreme Court or Second Circuit precedent addressing the constitutionality of 18 U.S.C. § 1507 or any analogous state statute. As a sitting United States Magistrate Judge and a judicial nominee, it is inappropriate for me to opine on the constitutionality of 18 U.S.C. § 1507 or any analogous state statute.

17. **What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?**

Response: In *Cohen v. California*, 403 U.S. 150 (1971), the Supreme Court held that states can prohibit the use of "fighting words," defined as "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." *Id.* at 20.

18. **What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: In *Virginia v. Black*, 538 U.S. 343 (2003), the Supreme Court held that where a speaker intends "to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals," the speaker's statement does not constitute protected free speech under the true threats doctrine. *Id.* at 359.

19. **Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: My judicial philosophy derives from my adherence to the rule of law, my oath to decide cases fairly and impartially, and my commitment to treat all parties equally and with respect. From that philosophy evolves the obligations to treat each case with an open mind and without any preconceived personal beliefs, or policy or political preferences; to carefully listen to and consider the parties' factual presentations and legal arguments; to neutrally and impartially apply the law to the facts, faithfully applying all binding Supreme Court and Second Circuit precedent; and to issue thorough and detailed decisions that are restrained to the specific issues presented. Although I have not studied all opinions issued by the Supreme Court over the past 50 years, I am not aware of any opinion that exemplifies this philosophy more than any other.

20. **Please identify a Second Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: My judicial philosophy derives from my adherence to the rule of law, my oath to decide cases fairly and impartially, and my commitment to treat all parties equally and with respect. From that philosophy evolves the obligations to treat each case with an open mind and without any preconceived personal beliefs, or policy or political preferences; to

carefully listen to and consider the parties' factual presentations and legal arguments; to neutrally and impartially apply the law to the facts, faithfully applying all binding Supreme Court and Second Circuit precedent; and to issue thorough and detailed decisions that are restrained to the specific issues presented. Although I have not studied all opinions issued by the Second Circuit over the past 50 years, I am not aware of any opinion that exemplifies my judicial philosophy more than any other.

21. **When you are considering a case, do you have a process for ensuring that you correctly understand how the law should apply, without letting personal preferences shape your view? If so, what is your process or approach?**

Response: I treat each case with an open mind and without any preconceived personal beliefs, or policy or political preferences. I carefully listen to and consider the parties' factual presentations and legal arguments. I neutrally and impartially apply the law to the facts, faithfully applying all binding Supreme Court and Second Circuit precedent. Finally, I issue thorough and detailed decisions that are restrained to the specific issues presented. Following this process ensures that I correctly understand how the law should be applied, without permitting my personal preferences to shape how I view the case.

22. **During your selection process, did you talk with anyone from or anyone directly associated with the Raben Group or the Committee for a Fair Judiciary? If so, what was the nature of those discussions?**

Response: In April 2021 I communicated with Robert Raben, in his role as Chair of the Hispanic National Bar Association's Judicial Endorsement Committee, seeking the HNBA's endorsement to Senators Schumer and Gillibrand for appointment as a United States District Judge for the Eastern District of New York. I subsequently interviewed with the HNBA Judicial Endorsement Committee and received the HNBA's endorsement. I have not had any contact with anyone else associated with the two groups listed above.

23. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

24. **During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

25. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? 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, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

26. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

    Response: No.

27. **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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

        Response: No.

    a. **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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

        Response: No.

28. **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.

29. **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 never had contact with anyone associated with these entities.

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.

30. **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 Foundations 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.

31. **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.

32. **The Raben Group is "a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors." It manages the Committee for a Fair Judiciary.**

    a. **Has anyone associated with The Raben Group or the Committee for a Fair Judiciary 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 Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

    Response: In April 2021 I communicated with Robert Raben, in his role as Chair of the Hispanic National Bar Association's Judicial Endorsement Committee, to seek the HNBA's endorsement to Senators Schumer and Gillibrand for appointment as a United States District Judge for the Eastern District of New York. I subsequently interviewed with the HNBA Judicial Endorsement Committee and received the HNBA's endorsement. I have not had any contact with any of the other individuals listed above.

33. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

    Response: In March 2021, I submitted an application for a position on the U.S. District Court for the Eastern District of New York to Senator Charles Schumer's Judicial Screening Committee. On March 30, 2021, I interviewed with Senator Schumer's Screening Committee. On May 27, 2022, I interviewed with Senator Schumer. On June 2, 2022, I heard from Senator Schumer that he would be submitting my name to the White House for consideration regarding a federal district court vacancy in the Eastern District of New York. On June 9, 2022, I was contacted by the White House Counsel's Office

concerning my potential nomination. On June 10, 2022, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On September 6, 2022, my nomination was submitted to the Senate.

34. **Please explain, with particularity, the process whereby you answered these questions**.

Response: I received the questions from the Department of Justice's Office of Legal Policy on December 7, 2022. I reviewed the questions, conducted research when necessary, and provided a set of draft answers to OLP. I received minor feedback from OLP, and thereafter finalized my answers for submission to the Judiciary Committee.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Ramon Reyes, nominated to be United States District Judge for the Eastern District of New York

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Is racial discrimination wrong?**

Response: Racial discrimination is generally unlawful under the Constitution and laws of the United States. Various federal statutes prohibit racial discrimination in employment, public accommodations, and other contexts. Race is a suspect classification that is subject to strict scrutiny, and racial classifications are only permissible when narrowly tailored to achieve a compelling governmental interest. If confirmed, I would apply binding Supreme Court and Second Circuit precedent to determine whether alleged instances of racial discrimination violate the law.

2. **Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?**

Response: In *Washington v. Glucksburg*, 521 U.S. 702 (1997), the Supreme Court held that certain unenumerated rights are protected by the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution. Such unenumerated rights are objectively "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Id.* at 720–21. As a sitting United States Magistrate Judge and a judicial nominee it would be inappropriate for me to comment on whether I believe there are other specific unenumerated rights, not yet articulated by the Supreme Court, that do exist. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will strictly adhere to Supreme Court and Second Circuit precedent as to which rights the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution recognize and protect.

3. **How would you characterize your judicial philosophy? 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 derives from my adherence to the rule of law, my oath to decide cases fairly and impartially, and my commitment to treat all parties equally and with respect. From that philosophy evolves the obligations to treat each case with an open mind and without any preconceived personal beliefs, or policy or political preferences; to carefully listen to and consider the parties' factual presentations and legal arguments; to neutrally and impartially apply the law to the facts, faithfully applying all binding Supreme Court and Second Circuit precedent; and to issue thorough and detailed decisions that are restrained to the specific issues presented. I have not studied the judicial philosophies of all Supreme Court Justices since the Warren Court, and am not aware of any Justice that exemplifies this philosophy more than any other.

4. **Please briefly describe the interpretative method known as originalism. Would you**

characterize yourself as an 'originalist'?

Response: "Originalism" is "the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted . . . the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." Black's Law Dictionary (11th ed. 2019). I do not use a particular label to characterize my judicial philosophy. If confirmed, I will apply binding Supreme Court and Second Circuit precedent regarding issues of constitutional interpretation.

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?**

Response: "Living constitutionalism" is "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Black's Law Dictionary (11th ed. 2019). I do not use a particular label to characterize my judicial philosophy. If confirmed, I will apply binding Supreme Court and Second Circuit precedent regarding issues of constitutional interpretation.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: Constitutional interpretation begins with an examination of the text of the provision and any binding precedent of the Supreme Court or Circuit interpreting it. In the rare instance where the provision is ambiguous after considering the text and the applicable precedent, I would look to any Supreme Court guidance as to the method by which the text should be interpreted, the role of the provision in the constitutional structure, and any evidence of the original public meaning of the provision.

7. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: Generally, the public's current understanding of the Constitution or a statute is not relevant when determining their meaning. When interpreting a constitutional or statutory provision, judges should be guided by the plain language of the text and applicable Supreme Court and Circuit precedent. However, the Supreme Court has applied currently prevailing standards in certain constitutional contexts. *E.g.*, *Miller v. California*, 413 U.S. 15 (1973) (First Amendment); *Atkins v. Virginia*, 536 U.S. 304 (2002) (Eighth Amendment). If confirmed, I would consider the public's current understanding only if such an approach is consistent with Supreme Court and Second Circuit precedent.

8. **Do you believe the meaning of the Constitution changes over time absent changes**

through the Article V amendment process?

Response: The meaning of the Constitution does not change over time. Changes to the text of the Constitution must be made pursuant to the Article V amendment process. The Supreme Court has set forth the manner in which the Constitution shall be interpreted. If confirmed, I will apply binding Supreme Court and Second Circuit precedent regarding issues of constitutional interpretation.

9. **Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?**

Response: *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), is binding Supreme Court precedent.

a. **Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me.

10. **Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: *New York Rifle & Pistol Association v. Bruen,* 142 S. Ct. 2111 (2022), is binding Supreme Court precedent.

a. **Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me.

11. **Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?**

Response: *Brown v. Board of Education*, 347 U.S. 483 (1954), is binding Supreme Court precedent.

a. **Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme

Court and Second Circuit precedent to the cases that would come before me. That being said, it is generally understood that *Brown v. Board of Education* was "correctly decided" as it has become so firmly rooted in American jurisprudence and the issue is not likely to come before the Court again.

12. **What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: The Bail Reform Act of 1984, 18 U.S.C. §§ 3141, *et seq.*, creates a rebuttable presumption in favor of detention if the judge finds probable cause to believe a defendant committed certain enumerated offenses, including, but not limited to: certain drug offenses carrying a maximum term of imprisonment of ten years or more; unlawful firearm offenses; specific crimes of violence, including acts of terrorism; and, certain offenses involving minor victims. 18 U.S.C. § 3142(e)(3). In addition, a rebuttable presumption in favor of detention arises if the judge finds that the defendant meets certain criteria regarding prior convictions of specific offenses including, but not limited to: specific crimes of violence or drug offenses carrying maximum terms of imprisonment for ten years or more; offenses carrying maximum sentence of life imprisonment or death; certain offenses involving a minor victim; and offenses involving the possession or use of a firearm, destructive device or any other dangerous weapon. 18 U.S.C. § 3142(e)(2) and (f)(1).

a. **What are the policy rationales underlying such a presumption?**

Response: The Bail Reform Act reflects the conclusions of Congress that a person charged with one of the enumerated offenses in § 3142(e)(2) or (3), or who commits a felony while on pretrial release presents a serious risk of flight or a danger to the community such that no conditions or combination of conditions of pretrial release can reasonably assure that person's appearance at trial or the safety of the community.

13. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: Yes. The First Amendment to the Constitution provides that federal laws or government actions that prohibit the free exercise of religion are impermissible. The Fourteenth Amendment extends this prohibition to the states. Supreme Court precedent requires that the government show that any law that burdens the free exercise of religion is neutral and generally applicable; if it is not, the government is then required to show that it is narrowly tailored to meet a compelling governmental interest. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). If the law treats any comparable secular activity more favorably than the religious exercise, or if the government acts in a manner that is hostile to religious beliefs, then strict scrutiny would apply. *See Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021).

In addition, under the Religious Freedom Restoration Act (RFRA), "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless "it demonstrates that application of the burden . . . is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb–1(a)–(b); *see also Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020).

14. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: Such governmental action would be permissible only if it survived strict scrutiny. "[S]trict scrutiny requires the State to further 'interests of the highest order' by means 'narrowly tailored in pursuit of those interests.'" *Tandon v. Newsom*, 141 S. Ct. 1294, 1298 (2021) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)).

15. **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: At issue in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), were New York State regulations regarding the attendance of religious services during the COVID-19 pandemic. The Supreme Court held that the religious entity-applicants were entitled to a preliminary injunction pending appellate review because they were likely to succeed on the merits of their First Amendment claims, they were likely to suffer irreparable harm, and there was no evidence that granting the injunction would be harmful to the public. The Court determined that the challenged restrictions did not withstand strict scrutiny because they were not narrowly tailored to meet compelling government interest as less restrictive means were available to address the health risks at issue.

16. **Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom.***

Response: At issue in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), were California's restrictions on private gatherings during the COVID-19 pandemic. The Supreme Court held that the petitioners, who wished to gather for at-home religious exercise, were entitled to a preliminary injunction pending appeal. Applying strict scrutiny, the Court found that California's regulations, which contained myriad exceptions and accommodations for secular activities comparable to religious activities, were neither

neutral nor generally applicable because they treated secular gatherings more favorably than religious gatherings and therefore violated the Free Exercise Clause. *Id.* at 1297.

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

Response: Yes.

18. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.***

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Colorado Civil Rights Commission's conduct in issuing a cease and desist letter to a cake shop owner who had declined for religious reasons to make a wedding cake for a same-sex couple violated the Free Exercise Clause of the First Amendment. The Court concluded that in issuing the cease and desist letter the Commission demonstrated "clear and impermissible hostility toward the sincere religious beliefs that motivated [the baker's] objection", *id.* at 1729, and in so doing violated the State's duty under the First Amendment not to use hostility toward religion or a religious viewpoint as a basis for laws or regulations. The Court did not reach the constitutionality of the baker's refusal to serve the couple.

19. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: Yes, if the beliefs are sincerely held. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014); *Frazee v. Ill. Dep't of Emp. Security*, 489 U.S. 829, 834 (1989). The Supreme Court has indicated that whether the First Amendment protects a religious belief does not "turn upon a judicial perception of the particular belief or practice in question" and that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). However, the Supreme Court also observed that "[o]ne can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause . . . ."). *Id.* at 715.

a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Please see response to Question 19.

b. **Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: Please see response to Question 19.

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate for me to opine or comment on the official position of the Catholic church.

20. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Our Lady of Guadalupe School v. Morrisey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that the "ministerial exception" protects religious institutions from certain discrimination claims, and that such institutions may decide matters of church government, faith, and doctrine free from governmental interference.

21. **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 Supreme Court held that Philadelphia's refusal to contract with Catholic Social Services (CSS) for the provision of foster care services unless CSS agreed to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. The Supreme Court determined that Philadelphia's policy was not generally applicable because it allowed discretionary individual exemptions. Applying strict scrutiny, the Court concluded that because Philadelphia could not show that its refusal to contract with CSS was narrowly tailored to advance a compelling governmental interest, its failure to do so violated the Free Exercise Clause.

22. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court held that Maine's "nonsectarian" requirement for otherwise generally available tuition assistance payments to parents who live in school districts that do not operate a secondary school of their own violated the First Amendment's Free Exercise Clause because it barred

religious school students from receiving tuition assistance solely because of the exercise of their religion.

23. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that a school district violated the First Amendment by terminating a high school football coach who engaged in personal prayer on the field at the conclusion of games. The Supreme Court determined that the school district's restriction of the coach's private speech and religious expression violated the Free Speech and Free Exercise Clauses where "the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech." *Id.* at 2433.

24. **Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court vacated a Minnesota state court judgment and remanded the case for further consideration in light of *Fulton v. Philadelphia*, 141 S. Ct. 1868 (2021). The petitioner, an Amish community, claimed that the County's refusal to grant an exception to its septic system mandate based on their sincerely held religious beliefs violated the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc *et seq*. In his concurrence, Justice Gorsuch explained that RLUIPA triggers strict scrutiny, where courts "cannot rely on broadly formed governmental interests, but must scrutinize the asserted harm of granting specific exemptions to particular religious claimants." 141 S. Ct. at 2432 (internal quotation marks omitted). Justice Gorsuch suggested that, on remand, the Minnesota court should analyze whether the county had demonstrated a compelling interest in denying the petitioners an exception; consider the exceptions provided to others and why those exceptions could not be provided to petitioners; and, question whether the evidence demonstrated the workability of the less restrictive proposal advanced by petitioners.

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: 18 U.S.C. § 1507 prohibits picketing or parading in or near a courthouse or a residence of, among others, a judge, juror, or witness, with the intent of influencing that person. As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate for me to express an opinion on how this statute should be interpreted in

any particular context.

26. **Would 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: No.

    b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

       Response: No.

    c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

       Response: No.

    d. **Meritocracy or related values such as work ethic are racist or sexist?**

       Response: No.

27. **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 would neither encourage nor support such trainings.

28. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?**

    Response: Yes.

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

    Response: As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate for me to comment on the political decisions of either the executive or legislative branches, or whether actions following such decisions are constitutional.

30. **Is the criminal justice system systemically racist?**

    Response: In every civil or criminal matter that has come before me as a United States

Magistrate Judge I have treated every litigant – plaintiff or defendant, government, corporation, or individual – fairly and with respect, and to the best of my knowledge the judges with whom I have been pleased to serve with or appear before have done the same. Beyond that it would be inappropriate for me to comment on the criminal justice system more broadly.

31. **President Biden has created a commission to advise him on reforming the U.S. Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: Whether to increase or decrease the number of Justices on the Supreme Court is a matter for the political branches of government to decide. As a sitting United States Magistrate Judge and a judicial nominee, it would not be appropriate for me to comment on this issue.

32. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No.

33. **What do you understand to be the original public meaning of the Second Amendment?**

Response: In its trilogy of *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that the original public meaning of the Second Amendment guarantees the individual right to keep and bear arms, applicable to the States through the Fourteenth Amendment, both inside and outside the home.

34. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court explained that the individual right to keep and bear arms was not without limitations including, but not limited to, "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 626–627. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that restrictions on the Second Amendment must be consistent with the nation's historical tradition of firearm regulation. *Id.* at 2129–30.

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

Response: The ability to own a firearm is a constitutional right protected by the Second Amendment.

36. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: No. In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that the "the constitutional right to bear arms in public for self-defense is not a second class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Id.* at 2156 (quoting *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010)) (internal quotation marks omitted).

37. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: No.

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

Response: As a general matter, the executive retains broad prosecutorial discretion, limited in that it may not be exercised based upon unjustifiable standards like race, religion, or other suspect or arbitrary classification. *Wayte v. United States*, 470 U.S. 598 (1985); *United States v. Nixon*, 418 U.S. 683, 693 (1974). The question of whether an executive is properly exercising prosecutorial discretion is a matter of a policy best left to elected representatives and the political process. As a sitting United States Magistrate Judge and a judicial nominee, it is inappropriate for me to comment on particular prosecutorial decisions of the executive. However, if a case came before me where the executive's refusal to enforce a law was challenged, I would consider the arguments of the parties and all binding Supreme Court and Second Circuit precedent relevant to the question.

39. **Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.**

Response: "Prosecutorial discretion" refers to the prosecutor's ability in criminal matters to choose from a variety of options, including, among other things, whether to file charges, what charges to file, who to file charges against, which plea bargain to accept, and what sentence to recommend to the court. Outside of the Administrative Procedure Act (APA) context, I am not aware of the definition of a "substantive administrative rule change." To the extent the question refers to the APA, when expressly authorized by Congress, an executive branch agency may issue legislative rules through the notice-and-comment ruling making process. Such rules have the force of law.

40. **Does the President have the authority to abolish the death penalty?**

Response: I am unaware of any constitutional authority for the President to unilaterally abolish the death penalty. However, Article II of the Constitution vests the President with the authority to "grant reprieves and pardons for offenses against the United States," including cases in which the death penalty was imposed.

41. **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. Department of Health and Human Services*, 141 S. Ct. 2485 (2021), the Supreme Court held that the Center for Disease Control lacked the authority to impose a nationwide moratorium on evictions to protect tenants from COVID-19, and to slow the spread of the disease. Finding that the petitioners were likely to succeed on the merits of their claim, the Court vacated a stay imposed pending appeal of a district court's nationwide injunction against the imposition of the moratorium.

42. **In *Johnson v. Bellnier*, you recommended the defendant be granted habeas relief after he fired a gun approximately ten times down a street in the dark at a fleeing victim. After the shooting, the defendant fled not only the scene of the crime, but the state as well.**

    a. **Do you agree with the Second Circuit who reversed you that a rational trier of fact could have found that defendant guilty of depraved indifference murder beyond a reasonable doubt?**

    Response: Respectfully, I detailed my reasoning in my report and recommendation, *Johnson v. Bellnier*, No. 09–CV–00381 (KAM)(RER), 2010 WL 7100915 (E.D.N.Y. Nov. 8, 2010), which the district court adopted, 2011 WL 3235708 (E.D.N.Y. July 27, 2011). I respect the decision of the United States Court of Appeals for the Second Circuit and will apply it going forward if a similar issue arises in a subsequent case, as I would so apply all binding Supreme Court and Second Circuit precedent.

43. **In the March 2019, Federal Magistrate Judge's Association Bulletin, you noted "the FMJA Diversity Committee will unveil a new program at the Miami conference, 'Robes in Schools.' The program will target six high schools in the Miami area with diverse student populations and send two diverse Magistrate Judges to those schools to impart civic education information about Federal Courts and the role of Magistrate Judges."**

    a. **Who qualifies as a "diverse" magistrate judge?**

    Response: The FMJA Diversity Committee is comprised of more than 30 Magistrate Judges from across the country, representing different races, ethnicities, national

origins, genders, and geographic and professional backgrounds. The goal of this program was to inspire students to learn more about our system of government, and to consider careers in the law – and to see that federal judges come from all different personal and professional backgrounds.

44. **You spoke at the memorial service for Judge Trager, for whom you clerked. In your remarks, you made several interesting comments about how Judge Trager viewed the role of judging.**

a. **Do you think a judge's role is to achieve a "just result" or to say what the law is?**

Response: A judge's role is to adhere to the oaths of office to "support and defend the Constitution of the United States against all enemies, foreign and domestic [and to] bear true faith and allegiance to the same; [and] administer justice without respect to persons, and do equal right to the poor and to the rich, and [] faithfully and impartially discharge and perform all the duties incumbent upon [the judge] under the Constitution and laws of the United States." 5 U.S.C. § 3331; 28 U.S.C. § 453.

b. **Is it your belief that a judge should tailor voir dire to reach a desired outcome in terms of the racial composition of the jury?**

Response: No.

c. **Does this calculus change if the case is "racially charged?"**

Response: No.

d. **What does it mean to "take the time…to find a way" to downward depart from a high guideline sentence?**

Response: I clerked for Judge Trager twenty-eight years ago, when the Sentencing Guidelines were mandatory, which they no longer are. Judge Trager believed, as did many federal judges, that at times the Sentencing Guidelines constrained judges' abilities to fashion just sentences based on the facts of particular cases. As a result, he thought long and hard about each sentencing decision. In so doing, he considered all arguments and evidence, and always rendered sentences that were based on the facts and law, and within the confines of 18 U.S.C. § 3553, even if he departed downwardly from the Guidelines.

e. **Your comment about your judge in this regard would seem to imply that the**

judge was figuring out where he wanted to end up, and working backward, finding Guideline provisions to justify it. Would you consider such a methodology improper?

Response: I agree that any "result oriented" methodology is improper; and to be clear, I have never taken that approach as a judge. Judges should approach each case with an open mind, carefully consider all arguments, apply the law to the facts, including all applicable precedent, and do so without regard to any personal beliefs as to what the result should be. Respectfully, I disagree with the question's premise that Judge Trager "was figuring out where he wanted to end up" and was "working backward." That was never his approach, nor were my comments intended to suggest that it was.

If confirmed, in every criminal sentencing matter, I will evaluate each case before me on the facts and evidence presented. In doing so, I will apply the factors set forth in 18 U.S.C. § 3553(a), including considering the advisory Sentencing Guidelines and any relevant enhancements, as well as all binding precedent of the Supreme Court and Second Circuit.

Senator Ben Sasse
Questions for the Record for Ramon Ernesto Reyes, Jr.
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
November 30, 2022

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

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

   Response: My judicial philosophy derives from my adherence to the rule of law, my oath to decide cases fairly and impartially, and my commitment to treat all parties equally and with respect. From that philosophy evolves the obligations to treat each case with an open mind and without any preconceived personal beliefs, or policy or political preferences; to carefully listen to and consider the parties' factual presentations and legal arguments; to neutrally and impartially apply the law to the facts, faithfully applying all binding Supreme Court and Second Circuit precedent; and to issue thorough and detailed decisions that are restrained to the specific issues presented.

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

   Response: "Originalism" is "the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted . . . the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." Black's Law Dictionary (11th ed. 2019). I do not use a particular label to characterize my judicial philosophy. If confirmed, I will apply binding Supreme Court and Second Circuit precedent regarding issues of constitutional interpretation.

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

   Response: "Textualism" is "[t]he doctrine that the words of a governing text are of paramount concern and that what they fairly convey in their context is what the text means." Black's Law Dictionary (11th ed. 2019). I do not use a particular label to characterize my judicial philosophy. Constitutional interpretation begins with an examination of the text of the provision and any binding precedent of the Supreme Court or Circuit interpreting it. If confirmed, I will apply binding Supreme Court and Second Circuit precedent regarding issues of constitutional interpretation.

5. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

Response: The Supreme Court has stated that the meaning of the Constitution is fixed. *N.Y. State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) ("[T]he Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understanding of those who ratified it."). The Constitution may only be changed through the formal amendment process set forth in Article V.

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

Response: I have not carefully studied the jurisprudence of the Supreme Court Justices since January 20, 1953, and therefore cannot identify any single Justice whose jurisprudence I most admire. If confirmed as a district judge, I will faithfully apply all Supreme Court precedent, regardless of which Justice authored the opinion.

7. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?**

Response: Absent controlling Supreme Court precedent, a circuit court is required to apply its own precedent unless it is overruled by a subsequent *en banc* panel. *See* Fed. R. App. P. 35(a); *see also United States v. Felder*, 760 F. App'x 74, 76 (2d Cir. 2019) (citing *In re Sokolowski*, 205 F.3d 532 (2d Cir. 2000)). As a district court judge, I would be bound to follow the decisions of the Second Circuit regardless of any perceived conflict with the original public meaning of the Constitution.

8. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?**

Response: Please see my response to Question 7.

9. **What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?**

Response: When interpreting a statute, I begin with the text. If the text is unambiguous, the inquiry ends and "extrinsic factors" play no interpretive role. If the statutory text is ambiguous, however, I would look to extrinsic sources, including the canons of statutory construction, analogous precedent from the Supreme Court and the Second Circuit, persuasive authority from other courts addressing the same or similar issues, and finally legislative history.

10. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: No. A court must consider the factors provided in 18 U.S.C. § 3553 in imposing a sentence. Under 18 U.S.C. § 3553(a)(6), the court must consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." However, the Sentencing Guidelines explicitly state that race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." U.S. Sentencing Guidelines Manual § 5H1.10. If confirmed, I would apply the factors set forth by Congress in 18 U.S.C. § 3553, the Sentencing Guidelines, and any applicable Supreme Court and Second Circuit precedent, in making any sentencing decisions.

Senator Josh Hawley
Questions for the Record

Ramon Reyes
Nominee, Eastern District of New York

1. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

    a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

    Response: If confirmed, in every criminal sentencing matter, I will evaluate each case before me on the facts and evidence presented. In doing so, I will apply the factors set forth in 18 U.S.C. § 3553(a), including considering the advisory Sentencing Guidelines and any relevant enhancements, as well as all binding precedent of the Supreme Court and Second Circuit.

    b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

    Response: Please see my response to Question 1(a).

    c. **The enhancement for offenses involving the use of a computer**

    Response: Please see my response to Question 1(a).

    d. **The enhancements for the number of images involved**

    Response: Please see my response to Question 1(a).

2. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

    a. **Do you agree that the penalties should be aligned?**

    b. **If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?**

c. If an offender before you is charged only with possession even though uncontested evidence shows the offender also committed the crime of receiving child pornography, will you aim to sentence the offender to between 5 and 10 years?

Response to subparts (a) – (c): The alignment of penalties across criminal statutes is a matter best left to Congress. As a sitting United States Magistrate Judge and a judicial nominee, it is inappropriate for me to opine on whether criminal penalties should be aligned across criminal statutes. If confirmed, I will analyze each criminal sentence based upon its individual facts and circumstances, I will consider the relevant factors in 18 U.S.C. § 3553(a); the applicable Sentencing Guidelines; binding Supreme Court and Second Circuit precedent; the submissions of the parties, the presentence report, the victim impact statement, and any other relevant materials.

3. 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 to subparts (a) – (b): I am unfamiliar with Justice Marshall's quote or the specific context in which it was made. Judges take an oath to faithfully and impartially uphold and apply the Constitution and laws of the United States, and are bound by the Rule of Law to decide all cases based upon the facts and the applicable law. I have followed this oath as a United States Magistrate Judge for almost seventeen years. If confirmed, I will continue to do the same by faithfully applying all binding Supreme Court and Second Circuit precedent, regardless of my personal preferences as to what the outcome of any case should be.

4. Do you believe that the Supreme Court's ruling in *Dobbs* v. *Jackson Women's Health Organization* is settled law?

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* is binding precedent. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me, including *Dobbs v. Jackson Women's Health Organization*.

5. What is the standard for each kind of abstention in the court to which you have been nominated?

Response: Under the *Pullman* abstention doctrine, federal courts "ought not to consider the Constitutionality of a state statute in the absence of a controlling interpretation of its meaning and effect by the state courts." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 75 (1997) (citation omitted); *see R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 498–501 (1941). In the Second Circuit, courts should exercise *Pullman* abstention "when three conditions are met: (1) an unclear state statute is at issue; (2) resolution of the federal constitutional issue depends on the interpretation of the state law; and (3) the law is susceptible 'to an interpretation by a state court that would avoid or modify the federal constitutional issue.'" *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 100 (2d Cir. 2004) (citations omitted). However, "[e]ven when these conditions are fulfilled, [courts in the Second Circuit] are not required to abstain, and, to the contrary, 'important federal rights can outweigh the interests underlying the *Pullman* doctrine.'" *Id.* (citations omitted).

Under the *Younger* abstention doctrine, federal courts are "forbid[den from] stay[ing] or enjoin[ing] pending state court proceedings except under special circumstances." *Younger v. Harris*, 401 U.S. 37, 41 (1971). In the Second Circuit, "*Younger* abstention is mandatory when: (1) there is a pending state proceeding, (2) that implicates an important state interest, and (3) the state proceeding affords the federal plaintiff an adequate opportunity for judicial review of his or her federal constitutional claims." *Spargo v. N.Y. State Comm'n on Judicial Conduct*, 351 F.3d 65, 75 (2d Cir. 2003) (citations omitted).

Under the *Burford* abstention doctrine, "[w]here timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar'; or (2) where the 'exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.'" *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 361 (1989) (citation omitted); *see also Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). Courts in the Second Circuit consider the following factors when analyzing a *Burford* abstention issue: "(1) the degree of specificity of the state regulatory scheme; (2) the need to give one or another debatable construction to a state statute; and (3) whether the subject matter of the litigation is traditionally one of state concern." *Liberty Mut. Ins. Co. v. Hurlbut*, 585 F.3d 639, 650 (2d Cir. 2009) (quoting *Hachamovitch v. DeBuono*, 159 F.3d 687, 697 (2d Cir. 1998)).

Under the *Rooker-Feldman* abstention doctrine, federal courts are precluded from exercising subject-matter jurisdiction to review "cases brought by state-court losers complaining of injuries caused by state- court judgments rendered before the [federal] 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); *see also Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). In the Second Circuit, there are "four requirements that must be met for *Rooker-Feldman* to apply: (1) 'the federal-court plaintiff must have lost in state court;' (2) 'the plaintiff must complain of injuries caused by a state-court judgment;' (3) 'the plaintiff must invite district court review and rejection of that judgment;' and (4) 'the state-court judgment must have been rendered before the district court proceedings commenced.'" *Dorce v. City of New York*, 2 F.4th 82, 101 (2d Cir. 2021) (citation omitted). "[T]he second requirement – that the plaintiff complains of an injury caused by a state-court judgment – is the core requirement from which the other *Rooker-Feldman* requirements derive." *Id.* at 102 (citing *Sung Cho v. City of New York*, 910 F.3d 639, 646 (2d Cir. 2018)).

Under the *Colorado River* abstention doctrine, federal courts "may abstain in order to conserve federal judicial resources . . . where the resolution of existing concurrent state-court litigation could result in 'comprehensive disposition of litigation.'" *Woodford v. Cmty. Action Agency of Greene Cnty., Inc.*, 239 F.3d 517, 522 (2d Cir. 2001) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813, 817 (1976)). In the Second Circuit, courts "should consider (1) whether the controversy involves a res over which one of the courts has assumed jurisdiction; (2) whether the federal forum is less inconvenient than the other for the parties; (3) whether staying or dismissing the federal action will avoid piecemeal litigation; (4) the order in which the actions were filed, and whether proceedings have advanced more in one forum than in the other; (5) whether federal law provides the rule of decision; and (6) whether the state procedures are adequate to protect the plaintiff's federal rights." *Id.* (internal citations omitted).

Under the *Brillhart/Wilton* abstention doctrine, "[t]o avoid wasteful and duplicative litigation, district courts may often dismiss declaratory judgment actions 'where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties.'" *Kanciper v. Suffolk Cnty. Soc. for the Prevention of Cruelty to Animals, Inc.*, 722 F.3d 88, 91 (2d Cir. 2013) (citations omitted); *see Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491 (1942); *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995). In the Second Circuit, when deciding whether to abstain, courts consider "(1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved and (2) whether a judgment would finalize the controversy and offer relief from uncertainty." *Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist.*, 673 F.3d 84, 105 (2d Cir. 2012) (internal quotation marks and citations omitted).

Under the *Thibodaux* doctrine, federal courts "may refrain from deciding questions of state law otherwise within [their] jurisdiction" when "a difficult question of state law of

substantial import is presented." *Smith v. Metro. Prop. Liab. Ins. Co.*, 629 F.2d 757, 759 (2d Cir. 1980) (citing *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 27–29 (1959)).

6. 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.

7. What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?

Response: The original meaning of a constitutional provision can play a role in interpreting the Constitution. Analysis of any constitutional provision must begin with an examination of the text and any binding interpretations of the text by the Supreme Court and relevant Circuit Court. In a number of cases, the Supreme Court has emphasized the role of original meaning in interpreting a constitutional provision. *See, e.g.*, *District of Columbia v. Heller,* 554 U.S. 570 (2008). The Supreme Court has applied the original public meaning in various contexts. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

8. Do you consider legislative history when interpreting legal texts?

Response: When interpreting "legal texts," I begin with the text. If the text is unambiguous, the inquiry ends and legislative history plays no part in the interpretation of the text. If the text is ambiguous, however, I would look to extrinsic sources, including the canons of construction, precedent from the Supreme Court and the Second Circuit, persuasive authority from other courts addressing the same or similar issues, and finally legislative history, if necessary.

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 held that "the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill," *Garcia v. United States*, 469 U.S. 70, 76 (1984), while "floor statements by individual legislators rank among the least illuminating forms of legislative history." *NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 943 (2017). If confirmed as

a district court judge, I will faithfully and impartially follow binding Supreme Court and Second Circuit precedent regarding 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: I am unaware of any Supreme Court or Second Circuit precedent that stands for the proposition that it is appropriate to consult the laws of foreign nations when interpreting the provisions of the United States Constitution.

9. 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: To successfully challenge an execution protocol under the Eighth Amendment, "a prisoner must show a feasible and readily implemented alternative method that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1125 (2019) (citing *Baze v. Rees*, 553 U.S. 35, 52 (2008); *Glossip v. Gross*, 576 U.S. 863, 867–68 (2015)).

10. 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.

11. 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 Supreme Court held that a habeas corpus petitioner does not have a substantive due process right to access DNA evidence. The Second Circuit has acknowledged this standard. *See Newton v. City of New York*, 779 F.3d 140, 147 (2d Cir. 2015).

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.

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 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: To survive a constitutional challenge under the Free Exercise Clause, a law that is both neutral and generally applicable need only be rationally related to a legitimate governmental interest. *See Employment Div., Dep't of Human Res. of Oregon v. Smith*, 110 S. Ct. 1595, 1598–1606 (1990). However, if a law affecting the free exercise of religion is either not neutral or is not generally applicable, it "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); *see also Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Fulton v. City of Phila.*, 141 S. Ct. 1868 (2021); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020); *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1732 (2018). If confirmed, I will follow binding Supreme Court and Second Circuit precedent on this issue.

14. 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 13.

15. 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 Supreme Court has held that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1876 (2021) (citing *Thomas v. Review Bd. of Indian Employment Security Div.*, 450 U.S. 707, 714 (1981)). A court's "narrow function" in evaluating the sincerity of a religious belief is whether the asserted belief "reflects 'an honest conviction.'" *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (quoting *Thomas*, 450 U.S. at 716).

In the Second Circuit, a court's "scrutiny extends only to whether a claimant sincerely holds a particular belief and whether the belief is religious in nature." *Ford v. McGinnis*, 352 F.3d 582, 589–90 (2d Cir. 2003) (quoting *Jolly v. Coughlin*, 76 F.3d 468, 476 (2d Cir. 1996)). If confirmed, I will follow binding Supreme Court and Second Circuit precedent on this issue.

16. 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 *Heller*, the Supreme Court held that the District of Columbia's "ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). More broadly, the Court determined that the Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.

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.

17. 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 this statement and his dissent, Justice Holmes seems to convey that the Constitution "is not intended to embody a particular economic theory . . . ." *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). As a sitting United States Magistrate Judge and a judicial nominee, it is inappropriate for me to comment or express an opinion on whether I agree with a comment made by another judge.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: The decision in *Lochner* was abrogated by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). In a subsequent decision, the Supreme Court stated that the "[t]he doctrine that prevailed in *Lochner* . . . and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature acted unwisely—has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

18. 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: No. I will follow all Supreme Court precedent that has not been formally overruled by the Supreme Court.

a. If so, what are they?

Response: Not applicable.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: I commit to faithfully apply all Supreme Court precedent.

19. 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 to subparts (a) – (c): To my knowledge, *United States v. Aluminum Company of America*, 148 F.2d 416 (2d Cir. 1945), has not been explicitly overruled and I would therefore be bound to apply its holding. The Second Circuit has held, however, that market share percentages alone are not conclusive in determining monopoly power. *Broadway Delivery Corp. v. United Parcel Serv. of*

America, Inc., 651 F.2d 122, 128 (2d Cir. 1983) (citing *United States v. Columbia Steel Co.*, 334 U.S. 495 (1948)). Determining monopoly power is a fact specific inquiry, considering market share along with "additional market characteristics, among them, the strength of the competition, the probable development of the industry, and consumer demand." *Id.* If a case came before me presenting the issue of what percentage of market share was necessary to constitute a monopoly, I would look to binding Supreme Court and Second Circuit precedent and faithfully apply that precedent to the relevant facts of the case.

20. Please describe your understanding of the "federal common law."

Response: Although the Supreme Court has indicated that "there is no federal general common law," *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938), the Court has recognized limited areas in which "federal common law" may apply, in cases or controversies with Article III standing, in the absence of a statute. *See Rodriguez v. Fed. Deposit Ins. Corp.*, 140 S. Ct. 713, 717 (2020).

21. 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: On questions of state constitutional interpretation, federal courts must defer to the decisions of the highest court in the state at issue. See *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938); *see also Wainwright v. Goode*, 464 U.S. 78, 84 (1983) ("[T]he views of the state's highest court with respect to state law are binding on the federal courts.") (citations omitted). If confirmed, I will look to the decisions of the highest court of the state whose constitution is at issue.

a. Do you believe that identical texts should be interpreted identically?

Response: Because federal courts must interpret the Constitution according to Supreme Court and Circuit Court precedent, while "the views of the state's highest court with respect to state law are binding on the federal courts," *Wainwright v. Goode*, 464 U.S. 78, 84 (1983), federal courts may interpret identical federal and state constitutional provisions differently.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: In general, yes. A state may provide greater, but not less protection, under their state's constitution than is provided by the federal constitution. See *Rice v. Santa Fe Elevator Grp.*, 331 U.S. 218 (1947).

22. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is generally inappropriate for me to opine on whether any binding Supreme Court precedent was correctly decided. If confirmed, I will apply all binding Supreme Court and Second Circuit precedent to the cases that would come before me. That being said, it is generally understood that *Brown v. Board of Education* was "correctly decided" as it has become so firmly rooted in American jurisprudence and the issue is not likely to come before the Court again.

23. Do federal courts have the legal authority to issue nationwide injunctions?

Response: Yes, in certain circumstances.

a. If so, what is the source of that authority?

Response: The authority to issue injunctions is found in Federal Rule of Civil Procedure 65. The Supreme Court has explained 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). To date, the Supreme Court has not held that "nationwide injunctions" are per se impermissible.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Under Federal Rule of Criminal Procedure 65, injunctive relief may be granted where the party seeking such relief demonstrates (1) a likelihood of success on the merits; (2) that they will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief. If confirmed, I will faithfully and impartially follow all precedents of the Supreme Court and Second Circuit regarding the proper scope of injunctive relief.

24. 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 23.

25. What is your understanding of the role of federalism in our constitutional system?

Response: "Federalism" is the "legal relationship and distribution of power between the national and regional governments within a federal system of government, and in the United States particularly, between the federal government and the state governments." Black's Law Dictionary (11th ed. 2019). The Supreme Court has noted that "a healthy balance of power between the States and the Federal Government . . . reduce[s] the risk of tyranny and abuse from either front." *Gregory v. Ashcroft*, 501 U.S.452, 458 (1991).

26. 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 5.

27. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate for me to comment on or express my opinion regarding any issue which potentially could come before me.

28. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: The Supreme Court has held that the Due Process Clause of the Fifth and Fourteenth Amendments protect unenumerated rights "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *see also Palko v. Connecticut*, 302 U.S. 319, 325 (1937)). Under this standard, the Supreme Court has recognized a limited number of unenumerated rights, including *inter alia* the right to marry, *see Loving v. Virginia*, 388 U.S. 1 (1967); *Obergefell v. Hodges*, 576 U.S. 644 (2015); the right to live with one's family, *Moore v. East Cleveland*, 431 U.S. 494 (1977); the right of parents to control their children's education, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); and the right to engage in intimate relations in private, *Lawrence v. Texas*, 539 U.S. 558 (2003). In *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), the Supreme Court reaffirmed that the Due Process Clause protects certain substantive rights not otherwise enumerated in the Constitution which are "'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" *Id.* at 2242 (quoting *Glucksberg*, 521 U.S. at 721 (internal quotation marks omitted)).

29. 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 responses to Questions 13, 14, and 15.

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 right to free exercise is broader than freedom of worship. "The Free Exercise Clause embraces a freedom of conscience and worship[.]" *Lee v. Weisman*, 505 U.S. 577, 591 (1992).

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 Questions 13, 14, and 15.

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 15.

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 held that the Religious Freedom Restoration Act applies to all federal law. *Little Sisters of the Poor Saints Peter & 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: No.

30. 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 this statement or the context in which it was made. However, I understand this statement to acknowledge a judge's obligation to impartially apply the law to the facts of a case, regardless of his personal beliefs as to what the outcome should be.

31. 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: Not applicable.

32. 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.

33. Do you believe America is a systemically racist country?

Response: I am deeply proud to be an American, and of our Country's commitment to the rule of law and equal justice under law. As a judge, when cases come before me involving claims of racial discrimination I adjudicate them on a case-by-case basis and adhere strictly to the rule of law and equal justice under law. I treat every litigant – plaintiff or defendant, government, corporation, or individual – fairly and with respect, and to the best of my knowledge the judges with whom I have been pleased to serve with or appear before have done the same. Beyond that it would be inappropriate for me to comment more broadly on whether the United States of America is a systemically racist country.

34. Have you ever taken a position in litigation that conflicted with your personal views?

Response: No.

35. How did you handle the situation?

Response: Not applicable.

36. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

37. Which of the Federalist Papers has most shaped your views of the law?

Response: No single Federalist Paper has shaped my view of the law more than any other Federalist Paper.

38. Do you believe that an unborn child is a human being?

Response: In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court did not address the question of whether "an unborn child is a human being," and returned the question of abortion regulation to the people and their elected representatives. As a sitting United States Magistrate Judge and a judicial nominee, it is inappropriate for me to comment or express my opinion regarding any issue which potentially could come before me.

39. 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, once in the late-1980s. I do not have a record of that testimony and as far as I am aware the testimony is not "available online or as a record."

40. 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.

41. 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.

42. 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: Not applicable.

43. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Not applicable.

44. 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: My understanding of the duty of candor is that I have a duty to answer all questions truthfully in connection with my nomination to the United States District Court for the Eastern District of New York

Questions from Senator Thom Tillis
for Ramon Ernesto Reyes, Jr.
Nominee to be United States District Judge for the Eastern District of New York

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 "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 2019). I do not consider judicial activism appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Both the Code of Conduct for United States Judges and the judicial oath of office require judges to commit to impartiality. It is an aspiration, an expectation, and a requirement.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Yes. A judge must faithfully interpret and neutrally apply the law to the facts of the case, without regard to personal preferences and without regard to any desired outcome. It is for the executive and legislative branches to consider whether a particular outcome is desirable.

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 follow all binding Supreme Court and Second Circuit precedent concerning the Second Amendment, including *New York Rifle & Pistol*

Association v. Bruen, 142 S. Ct. 2111 (2022), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008).

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: If confirmed, I would evaluate the facts of the case and apply all binding Supreme Court and Second Circuit precedent concerning Second Amendment rights and pandemic-related restrictions affecting constitutional rights. *See, e.g.*, *New York Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111 (2022); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: Law enforcement personnel and departments are entitled to qualified immunity from civil damages liability "unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time. 'Clearly established' means that, at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful . . . . This demanding standard protects all but the plainly incompetent or those who knowingly violate the law." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (internal quotations and citations omitted); *see also Jones v. Treubig*, 963 F.3d 214, 224 (2d Cir. 2020). If confirmed, I would follow all binding Supreme Court and Second Circuit precedent concerning qualified immunity.

10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: Whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers is a question for policymakers to consider. As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate for me to comment on issues of public policy. If confirmed, I would follow all binding and applicable Supreme Court and Second Circuit precedent concerning qualified immunity.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: The proper scope of qualified immunity protections is an issue for policymakers to consider. As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate for me to comment on issues of public policy. If confirmed, I would follow all binding and applicable Supreme Court and Second Circuit precedent concerning qualified immunity.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate to express an opinion regarding the Supreme Court's jurisprudence on an issue that may come before me in the future. If confirmed, I would address any case involving patent eligibility by applying the Patent Act, 35 U.S.C. § 101, and would apply all applicable and binding precedent from the Supreme Court and the Second Circuit, including *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014) and *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), to the facts of the case before me.

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?

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?

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?

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?

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?**

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?**

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?**

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?**

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?**

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 to subparts (a) – (j): If confirmed, I would faithfully and impartially apply the Patent Act, 35 U.S.C. § 101, and all binding Supreme Court and Second Circuit precedent regarding patent eligibility, including *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014) and *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), to the specific facts of any case that comes before me. *Alice Corp. Pty. Ltd.* and *Mayo Collaborative Services* set forth a two-step approach to patent eligibility: First, it must be determined whether the subject claim is directed to something the Supreme Court has indicated is unpatentable. Second, if so, the court must evaluate whether the claim, taken as an ordered combination, nonetheless contains an inventive concept sufficient to render the claim eligible for patent protection. The outcome of such cases are dependent upon the specific facts and require careful consideration of the precise wording of the claim, the evidence presented, and the applicable precedent. As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate comment on or apply the law to hypothetical fact patterns involving issues that may come before me in the future.

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: Whether the current jurisprudence provides the clarity and consistency needed to achieve any particular goal is a question for policymakers to consider. As a sitting United States Magistrate Judge and judicial nominee, it would be inappropriate for me to comment on this policy issue. If confirmed, I would faithfully and impartially apply all binding Supreme Court and Second Circuit precedent regarding patent eligibility, including *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014) and *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), to the specific facts of the case before me.

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 an associate at O'Melveny & Myers LLP from 1995 to 1998, my practice involved copyright infringement cases. In such cases, I worked directly with a partner, and performed a wide variety of tasks from drafting pleadings, discovery requests and responses, and motions, to negotiating discovery disputes with adversaries.

As a United States Magistrate Judge, I have handled the pre-trial discovery and case management for many cases involving copyright law. I have also issued several reports and recommendations and memoranda and opinions in cases

involving copyright law. *See, e.g.*, *Bari v. Impremedia Operating Co., LLC*, No. 20-CV-310 (EK) (RER), 2021 WL 724904 (E.D.N.Y. Jan. 8, 2021), *report and recommendation adopted*, 2021 WL 720705 (E.D.N.Y. Feb. 24, 2021); *Lowery v. Fire Talk LLC*, No. 19-CV-3737 (LDH) (RER), 2020 WL 5441785 (E.D.N.Y. June 29, 2020), *report and recommendation adopted*, 2020 WL 5425768 (E.D.N.Y. Sept. 10, 2020); *Broad. Music, Inc. v. The Living Room Steak House, Inc.*, No. 14-CV-6298 (FB) (RER), 2016 WL 756567 (E.D.N.Y. Feb. 26, 2016), 2016 WL 1056609 (E.D.N.Y. Mar. 17, 2016); *Zlozower v. Barlotta*, No. 11-CV-1555 (RER), 2012 WL 13098709 (E.D.N.Y. Apr. 3, 2012); *Seoul Broad. Sys. Int'l, Inc. v. John Kim Sang*, 754 F. Supp. 2d 562 (E.D.N.Y. 2010).

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: As a United States Magistrate Judge, I have handled the pre-trial discovery and case management for a number of cases involving the Digital Millennium Copyright Act, and have issued a number of reports and recommendations in cases involving the Act. *See Feliciano v. Food Trucks in the Valley LLC*, No. 20-CV-1759 (MKB) (RER), 2021 WL 4150800 (E.D.N.Y. Aug. 26, 2021), *report and recommendation adopted*, 2021 WL 4147240 (E.D.N.Y. Sept. 13, 2021); *Prokos v. IQ Homes & Co. Inc.*, No. 20-CV-1220 (EK) (RER), 2021 WL 982878, (E.D.N.Y. Feb. 11, 2021), *report and recommendation adopted*, 2021 WL 980869 (E.D.N.Y. Mar. 16, 2021); *Simhaq v. Kid Carter Touring, Inc.*, No. 20-CV-2057 (RPK) (RER), 2021 WL 3810754 (E.D.N.Y. Aug. 11, 2021), *report and recommendation adopted*, 2021 WL 3793876 (E.D.N.Y. Aug. 26, 2021).

c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?

Response: To the best of my knowledge, I have not had any experience as a United States Magistrate Judge or as a practicing attorney involving intermediary liability for online service providers that host unlawful content posted by users.

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 an associate at O'Melveny & Myers LLP from 1995 to 1998, approximately half of my practice involved intellectual property cases involving trademark and copyright infringement issues. In such cases, I worked directly with a partner, and performed a wide variety of tasks from drafting pleadings,

discovery requests and responses, and motions, to negotiating discovery disputes with adversaries.

As a United States Magistrate Judge, I have been involved in the pre-trial discovery and case management of several cases involving First Amendment free speech issues, intellectual property, and copyright law, and have written several reports and recommendations and memoranda and orders in cases regarding these 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 any statute, I begin with the text. If the text is unambiguous, the inquiry ends and extrinsic factors, including legislative history, play no interpretive role. If the statutory text is ambiguous, however, I would look to extrinsic sources, including the canons of statutory construction, analogous precedent from the Supreme Court and the Second Circuit, persuasive authority from other courts addressing the same or similar issues, and finally legislative history.

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: If confirmed, I would review and apply binding Supreme Court and Second Circuit precedent regarding the appropriate level of deference to give an expert agency's analysis or advice, depending on the facts and circumstances of the case before me. *See, e.g.*, *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984); *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); *see also Capitol Recs., LLC v. Vimeo, LLC*, 826 F.3d 78 (2d Cir. 2016).

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: As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate for me to provide an opinion on a hypothetical issue that may come before me in the future. If confirmed, I would follow all binding and applicable Supreme Court and Second Circuit precedent on copyright infringement issues.

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: If confirmed, I would apply the DMCA and any binding Supreme Court or Second Circuit precedent concerning the statute. It is the role of the legislative branch to determine whether the DMCA should be amended in response to technological changes.

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: Please see my response to Question 17(a).

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate for me to comment on litigants' use of specific strategies or procedural devices, or the practices of other federal district court judges. To the best of my knowledge, cases in the Eastern District of New York are randomly assigned by the Clerk of the Court. *See* Local Rules for the Division of Business for the Eastern District of New York, Rule 2(b). If confirmed as a district judge, I would follow all binding Supreme Court and Second Circuit precedent concerning venue issues, and would apply all the relevant statutes and rules of the United States District Courts and the local rules of the Eastern District of New York.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: Please see my response to Question 18(a).

c. Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?

Response: No. If confirmed, I commit to abide by the rules and procedures of the Second Circuit and the Eastern District of New York, and will not proactively take steps to attract any particular type of case or litigant, as I have for the past sixteen years as a United States Magistrate Judge.

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: Please see my response to Question 18(c).

19. In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.

a. What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?

Response: A complaint regarding a district judge's conduct may be made under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364. Such a complaint would then be considered by the proper authorities within the Circuit, including the chief judge of the circuit.

b. Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?

Response: As a sitting United States Magistrate Judge and judicial nominee, it would be inappropriate for me to express an opinion on these issues.

20. When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?

a. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

b. To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response to Questions 20(a) and (b): As a sitting United States Magistrate Judge and judicial nominee, it would be inappropriate for me to express an opinion on these issues.

21. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

a. If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?

Response: Please see my response to Question 19(b).

b. Would five mandamus reversals be sufficient? Ten? Twenty?

Response: Please see my response to Question 19(b).

Judge Reyes Full Response to Senator Hawley Question 39
Committee Confidential
1/30/23

39. 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, once in the late-1980s. I do not have a record of that testimony and as far as I am aware the testimony is not "available online or as a record."

Confidential Response: In the late-1980s, I testified under oath in a child custody hearing involving members of my extended family. I do not have a record of that testimony. As far as I am aware the testimony is not "available online or as a record."

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge James Edward Simmons, Jr.
Judicial Nominee to the U.S. District Court for the Southern District of California

1. **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: I am not familiar with this quote, but I disagree with it. During my five years as a Superior Court Judge, I have never applied my personal values in reaching any decision. If confirmed as a United States District Judge, I would never apply my personal values in reaching any decision and will faithfully and impartially apply the law according to binding Supreme Court and Ninth Circuit precedent.

2. **Please define the term "living constitution."**

   Response: Black's Law Dictionary defines the term living constitution as "[a] constitution whose interpretation and application can vary over time according to changing circumstances and changing social values." *Living Constitution*, Black's Law Dictionary (11th ed. 2019).

3. **Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

   Response: I am not familiar with the context of then-Judge Ketanji Brown Jackson's statement on a living constitution. I believe the Constitution has a fixed meaning and does not change over time, unless it is amended by the process set forth in Article V. If confirmed as a United States District Judge, I will faithfully apply Supreme Court and Ninth Circuit precedent in analyzing issues of constitutional interpretation.

4. **Do parents have a constitutional right to direct the education of their children?**

   Response: In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Supreme Court held that parents have the right to direct their children's education.

5. **Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.**

   Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on this issue. In general, questions related to law enforcement funding are best left to policymakers.

6. **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: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on this issue. During my five years as a Superior Court Judge, I have presided over thousands of detention hearings, and I have followed the law under the Constitution and made decisions based on the facts presented in each individual case, as to whether an individual was a danger to public safety in addressing bond requests. If confirmed, I will apply the Bail Reform Act, 18 U.S.C. § 3142 in detention hearings and in sentencing, consider the factors under 18 U.S.C. § 3553(a).

7. **What role should empathy play in sentencing defendants?**

   Response: Empathy should not play a role at all in any phase of a case. Rather, a judge should treat all parties with dignity and respect and apply the law and binding precedent to the facts of the case.

8. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**
   a. **Was *Brown v. Board of Education* correctly decided?**

      Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. However, because *Brown v. Board of Education* is unlikely to be relitigated, I am comfortable answering that yes, I believe it was correctly decided.

   b. **Was *Loving v. Virginia* correctly decided?**

      Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. However, because *Loving v. Virginia* is unlikely to be relitigated, I am comfortable answering that yes, I believe it was correctly decided.

   c. **Was *Roe v. Wade* correctly decided?**

      Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. Furthermore, *Roe v. Wade* was overruled by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), and is no longer good law.

   d. **Was *Planned Parenthood v. Casey* correctly decided?**

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. Furthermore, *Planned Parenthood v. Casey* was overruled by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), and is no longer good law.

e. **Was *Griswold v. Connecticut* correctly decided?**

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. If confirmed, I will apply the precedent established by the Supreme Court and the Ninth Circuit.

f. **Was *Gonzales v. Carhart* correctly decided?**

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. If confirmed, I will apply the precedent in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

g. **Was *McDonald v. City of Chicago* correctly decided?**

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. If confirmed, I will apply the precedent established by the Supreme Court and the Ninth Circuit.

h. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. If confirmed, I will apply the precedent established by the Supreme Court and the Ninth Circuit.

i. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. If confirmed, I will apply the precedent established by the Supreme Court and the Ninth Circuit.

j. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. If confirmed, I will apply the precedent established by the Supreme Court and the Ninth Circuit.

9. **Is threatening Supreme Court justices right or wrong?**

Response: Depending on the specific facts, threatening Supreme Court justices could violate the law.

10. **Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: 18 USC § 1507 prohibits anyone from picketing or parading in or near a building housing a court of the United States, or in or near a building or residence occupied or used by a judge, juror, witness or court officer with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness or court office in the discharge of his duty.

11. **Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: I am unaware of any Supreme Court precedent that analyzes 18 USC § 1507 or a state analog statute.

12. **What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?**

Response: In *Chaplinksy v. New Hampshire*, 315 U.S. 568 (1942), the Supreme Court held that "fighting words" are not protected by the First Amendment and encompasses "words those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Id.* at 572.

13. **What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: In *Virginia v. Black*, 538 U.S. 343 (2003), the Supreme Court held that true threats are not protected by the First Amendment and "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.* at 359.

14. **Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: I have not studied all of the decisions of the Supreme Court or Ninth Circuit from the last 50 years to be able to answer this question. In my five years as a Superior Court Judge, my judicial philosophy has focused on keeping an open mind, being prepared, faithfully following the law, and treating all parties with respect.

15. **Please identify a Ninth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: Please see my response to Question 14.

16. **Under Supreme Court and Ninth Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: The Supreme Court has described questions of "basic" or "historical fact" as "questions of who did what, when or where, how or why." *U.S. Bank National Ass'n ex rel. v. Village at Lakeridge, LLC* 138 S. Ct. 960, 966 (2018). A district court's findings on such factual matters "are reviewable only for clear error." *Id.* The Court has explained that there is a category of mixed questions of law and fact which asks, "whether the historical facts found satisfy the [relevant] legal test." *Id.* The Court has instructed that the standard of review for such a mixed question depends on whether trial or appellate courts are "better suited to resolve it." *Id.* When a question requires a court to "expound on the law" or "develop auxiliary legal principles of use in other cases" then "appellate courts should typically review a decision *de novo*." *Id.* at 967. But when a mixed question primarily involves "case-specific factual issues … [then] appellate courts should usually review a decision with deference." *Id.*

17. **Please discuss your federal criminal legal experience, including the number of felony cases that you have personally handled, how many misdemeanor cases you have personally handled, how many times you have argued before the court in a criminal matter and how many jury trials you have participated in as lead/co-counsel?**

Response: During my 12 years as a prosecutor, I worked entirely in state court and did not have handle any federal criminal cases and did not appear in federal court on any criminal matters. However, during that time, I handled hundreds, if not thousands, of felony and misdemeanor cases, including trying over 50 jury trials to verdict, all as lead or co-counsel. Further, I did work in conjunction with the United States Attorney's Office in San Diego on several criminal prosecutions, including cases related to Project Safe Neighborhoods.

18. **Please discuss your familiarity with the Federal Rules of Criminal Procedure and the United States Sentencing Commission's Advisory Sentencing Guidelines. Specifically:**

a. **How often have you cited to either of these tomes during the course of your work?**

Response: During law school, I studied and learned the Federal Rules of Criminal Procedure. However, during my 12 years as a prosecutor and five years as a Superior Court Judge, I practiced solely in state court and did not cite to either. In the course of seeking this nomination, I have been studying the Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure and Federal Rules of Evidence. In addition, I believe that my extensive criminal experience in state court as a prosecutor and a judge will help me transition effectively if confirmed as a Federal District Judge. Further, I have also been studying the 2021 United States Sentencing Commission's Guidelines Manual and learning the applicable guidelines.

b. **How often have you had an opportunity to work within these constructs during the course of your career?**

Response: Please see my response to Question 18(a).

19. **Please discuss your federal civil legal experience, including the number of cases that you have personally handled.**

Response: During law school, I worked as a law clerk for two different law firms and worked on civil cases, though I did not make any court appearances in those cases. During my 12 years as a prosecutor and five years as a Superior Court Judge, I practiced solely in state court and did not have any cases in federal court.

20. **Please discuss your familiarity with the Federal Rules of Civil Procedure. Specifically:**

a. **How often have you cited to this tome during the course of your work?**

Response: During law school, I studied and learned the Federal Rules of Civil Procedure. However, during my 12 years as a prosecutor and five years as a Superior Court Judge, I practiced solely in state court and did not cite to the Federal Rules of Civil Procedure. In the course of seeking this nomination, I have studied the Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure, and Federal Rules of Evidence.

b. **How often have you had an opportunity to work within this construct during the course of your career?**

Response: During law school, I worked as a law clerk for two different law firms working on civil cases and assisted with the writing of a motion for summary

judgment in federal court, though I did not make any court appearances in those cases. During my 12 years as a prosecutor and five years as a Superior Court Judge, I practiced solely in state court and did not have any cases in federal court.

21. **Should judicial decisions take into consideration principles of social "equity"?**

Response: If confirmed as a United States District Judge, my decisions will be based solely on the facts and applicable law, and I will apply binding Supreme Court and Ninth Circuit precedent.

22. **What is implicit bias?**

Response: During my five years as Superior Court Judge, I have not had the opportunity to research this issue and therefore do not feel that I have a sufficient basis to offer a definition.

23. **Is the federal judiciary affected by implicit bias?**

Response: Please see my response to Question 22.

24. **Do you have any implicit biases? If so, what are they?**

Response: Please see my response to Question 22.

25. **When you are considering a case, do you have a process for ensuring that you correctly understand how the law should apply, without letting personal preferences shape your view? If so, what is your process or approach?**

Response: When considering a case, the first thing I do is read the briefs, determine the issues in dispute and review the applicable law. I then conduct research on any binding precedent. I have faithfully and impartially followed the law while a Superior Court Judge as my personal views are not relevant to my decision making. The parties before me deserve a decision rooted solely in the law based on the facts of their case. If confirmed, I will continue to faithfully and impartially follow the law and apply Supreme Court and Ninth Circuit precedent.

26. **During your selection process, did you talk with anyone from or anyone directly associated with the Raben Group or the Committee for a Fair Judiciary? If so, what was the nature of those discussions?**

Response: No.

27. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

28. **During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

29. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? 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, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

30. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

31. **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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

    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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

32. **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.

33. **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: Please see my response to Question 33(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.

34. **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 Foundations 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.

35. **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.

36. **The Raben Group is "a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors." It manages the Committee for a Fair Judiciary.**

a. **Has anyone associated with The Raben Group or the Committee for a Fair Judiciary 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 Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response: No.

37. **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: On January 30, 2021, I submitted my application for the U.S. District Court for the Southern District of California to Senator Feinstein's Judicial Advisory Committee. On February 19, 2021, I applied to the Office of Senator Padilla. On March 15, 2021, I was interviewed by Senator Feinstein's local advisory committee. On May 12, 2021, I met with the chair of Senator Padilla's judicial evaluation commission. On August 24, 2021, I was interviewed by Senator Padilla's local evaluation commission. On November 16, 2021, I was interviewed by the statewide chair of Senator Feinstein's advisory committee. On January 28, 2022, I was interviewed by the statewide chair of

Senator Padilla's commission. On February 18, 2022, I was interviewed by counsel for Senator Padilla. On March 3, 2022, I was interviewed by Senator Padilla. On March 11, 2022, I interviewed with attorneys from the White House Counsel's Office. Since March 13, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 14, 2022, my nomination was submitted to the Senate.

38. **Please explain, with particularity, the process whereby you answered these questions.**

Response: I received the questions from the Office of Legal Policy (OLP) on December 7, 2022. I reviewed the questions, conducted research when necessary and provided a set of draft answers to OLP. After receiving feedback from OLP, I finalized my responses for submission to the Senate Judiciary Committee.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for James Edward Simmons Jr., nominated to be United States District Judge for Southern District of California

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Is racial discrimination wrong?**

   Response: Racial discrimination is illegal and any law that discriminates on the basis of race is subject to strict scrutiny.

2. **Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?**

   Response: In *Washington v. Glucksburg*, 521 U.S. 702 (1997), the Supreme Court provided the framework in assessing whether there are unenumerated rights in the Constitution. The Court provided a two-part test: (1) that the right must be deeply rooted in this Nation's history and tradition; and (2) that there must a be careful description of the asserted right. If confirmed and confronted with a claim that an unenumerated right existed in the Constitution that was not yet articulated, I would apply the framework in *Glucksburg* and any other Supreme Court and Ninth Circuit precedent.

3. **How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

   Response: In the five years that I have been a Superior Court Judge, my judicial philosophy has focused on keeping an open mind, being prepared, faithfully following the law, and treating all parties with respect. I have not studied the philosophies of all the justices of those courts and thus cannot state which justice has a philosophy most similar to mine.

4. **Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an 'originalist'?**

   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." *Originalism*, Black's Law Dictionary (11th ed. 2019). I do not subscribe to any particular method of constitutional interpretation. If confirmed as a United States District Judge, I will faithfully apply Supreme Court and Ninth Circuit precedent regarding interpretative methods of analysis.

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?**

   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." *Living Constitutionalism*, Black's Law Dictionary (11th ed. 2019). I do not subscribe to any particular method of constitutional interpretation. If confirmed as a United States District Judge, I will faithfully apply Supreme Court and Ninth Circuit precedent regarding interpretative methods of analysis.

6. **If you were to be presented with a constitutional issue of first impression— that is, an**

issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?

Response: If presented with a constitutional issue of first impression whose resolution was not controlled by binding precedent, and the original public meaning of the Constitution was clear, I would follow the original public meaning of the Constitution.

7. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: The public's current understanding of the Constitution or of a statute is not relevant when determining the meaning of the Constitution or a statute. If confirmed as a United States District Judge, I will faithfully apply Supreme Court and Ninth Circuit precedent in analyzing issues of constitutional or statutory interpretation.

8. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: I believe the Constitution has a fixed meaning and does not change over time, unless it is amended by the process set forth in Article V. If confirmed as a United States District Judge, I will faithfully apply Supreme Court and Ninth Circuit precedent in analyzing issues of constitutional interpretation.

9. **Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?**

Response: Yes.

a. **Was it correctly decided?**

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not.

10. **Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: Yes.

a. **Was it correctly decided?**

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not.

11. **Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?**

Response: Yes.

a. **Was it correctly decided?**

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. However, because *Brown v. Board of Education* is unlikely to be relitigated, I am comfortable answering that yes, I believe it was correctly decided.

12. **What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: The Bail Reform Act of 1984, in 18 U.S.C. 3142(e)(3) lists several offenses in which there is a rebuttal presumption that no condition or combination of conditions will reasonably assure the appearance of a defendant as required and the safety of the community. Some offenses listed include sexual assault, sexual abuse, sex trafficking offenses involving a minor victim, failure to register under the Sex Offender Registration and Notification Act, certain violations of the Controlled Substances Act in which the maximum sentence is 10 years or more.

a. **What are the policy rationales underlying such a presumption?**

Response: The presumption reflects Congress' determination that defendants accused of certain crimes present a flight risk or danger to the community and that no conditions of pretrial release can reasonably assure that person's appearance in court or the safety of the community.

13. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: There are identifiable limits to government action imposed or required of private institutions. The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the federal 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 government interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014). If the government action does not survive strict scrutiny, the law is unconstitutional. See also *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

Further, the Supreme Court has recognized that sincerely held religious beliefs are protected by the Free Exercise Clause of the First Amendment. *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829 (1989). Any governmental burden by states on the free exercise of religion must be neutral and generally applicable. *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). 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." *Church of Lukumi Bablau Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). However, the Supreme Court has recognized that a law is not neutral and generally applicable if the "object of a law is to infringe upon or restrict practices because of their religious motivation," *id.* at 533, or if a facially neutral law has been applied with "a clear and impermissible hostility toward the sincere religious beliefs" of an individual, *Masterpiece Cake Shop v. Colorado Civil Rights*

Commission, 138 S. Ct. 1719, 1729-1731 (2018), or if the regulation "treat[s] any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). In those cases, the government must show that said regulation is narrowly tailored to meet a compelling government interest. *See, e.g., Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021).

14. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: Please see my response to Question 13.

15. **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 enjoined the State of New York from enforcing an Executive Order put in place during the COVID-19 pandemic. The Court held that the order was not neutral and was not narrowly tailored to meet a compelling government interest. The Court ruled that the loss of First Amendment freedoms for even a minimal period of time, "unquestionably constitutes irreparable injury," and appellants were entitled to injunctive relief. *Id.* at 67.

16. **Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom.***

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court enjoined the State of California from enforcing an executive order put in place during the COVID-19 pandemic. The order limited private, at-home religious gatherings. The Court found the order was not neutral nor generally applicable and therefore triggered strict scrutiny. *Id.* at 1296. The order did not survive strict scrutiny because, it "treat[ed] [a] comparable secular activity more favorably than religious exercise," and was not the least restrictive means to address the government interest. *Id.*

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

Response: Yes.

18. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.***

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Colorado Civil Rights Commission violated the Free Exercise Clause of the First Amendment through its handling of a discrimination claim against appellant bakery which refused to sell a wedding cake to a same sex couple, based

upon sincerely-held religious beliefs. The Court found that although the law was facially neutral and generally applicable, the Commission expressed a clear and impermissible hostility toward the sincere religious beliefs of the baker in violation of the Free Exercise Clause. *Id.* at 1729. The Commission's treatment of the baker "violated the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint." *Id.* at 1731.

19. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: The Free Exercise Clause protects sincerely-held religious beliefs. *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829 (1989). In *Frazee*, the Court explained, "we reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization." *Id.* at 834. However, "[o]nly beliefs rooted in religion are protected by the Free Exercise Clause." *Id.* at 833. Further, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Indiana Employment Sec. Division*, 450 U.S. 707, 714 (1981).

a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Please see my response to Question 19.

b. **Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: Please see my response to Question 19.

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to opine on the official position of any religious organization.

20. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that the Religion Clause of the First Amendment protects the right of churches or other religious institutions to decide matters of faith and doctrine without government intervention. As such, the ministerial exception applied and precluded employment discrimination claims. The teachers in these cases did not have the title of minister, but their "core responsibilities as teachers of religion were essentially the same," as they performed "vital religious duties." *Id.* at 2066. As such, the Court ruled that the teachers' employment discrimination claims against the schools were barred under the ministerial exception.

21. **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 Supreme Court held that the City of Philadelphia's refusal to place children in a foster care agency affiliated with the Roman Catholic Church, because it refused to certify same-sex couples as foster parents, violated the Free Exercise Clause of the First Amendment. The Court applied strict scrutiny and ruled that the City offered no compelling interest to support its refusal to deny an exception to Catholic Social Services while making exceptions to others, thus violating the Free Exercise Clause.

22. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court held that Maine's restriction on the use of tuition assistance payments to religious based private schools violated the Free Exercise Clause of the First Amendment. Maine provided tuition assistance payments to any family whose school district did not provide a public secondary school but excluded religious based schools from the program. Maine argued its restriction was based on the Establishment Clause, but the Supreme Court ruled that the Establishment Clause did not require exclusion of religious based schools and Maine's exclusion of religious based schools did not survive strict scrutiny.

23. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that both the Free Exercise and Free Speech Clauses of the First Amendment protected a football coach from engaging in a personal religious observance and prohibited the school district from disciplining the coach for such conduct. The Court held that the coach was engaged in private speech, not government speech, when he prayed quietly at midfield after games. The Court rejected the school district's argument that it was justified in restricting the conduct under the Establishment Clause and ruled the coach's dismissal was not justified.

24. **Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: Justice Gorsuch's concurring opinion in *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), addressed the state court's analysis of the Religious Land Use and Institutionalized Persons Act and the application of *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). Justice Gorsuch concluded that the Religious Land Use and Institutionalized Persons Act triggered a strict scrutiny analysis where courts cannot rely on broadly formed governmental interests but must scrutinize the asserted harm of granting specific exemptions to religious claimants. *Id.* at 2432. In this case, the Swartzentruber Amish community presented a less restrictive means to address the government interest that

was rejected by the government. Justice Gorsuch concluded that the government must prove with evidence that its rules are narrowly tailored to advance a compelling state interest with respect to the specific persons it seeks to regulate.

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: 18 USC § 1507 prohibits anyone from picketing or parading in or near a building housing a court of the United States, or in or near a building or residence occupied or used by a judge, juror, witness or court officer with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness or court office in the discharge of his duty.

26. **Would 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: No.

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

Response: No.

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

Response: No.

d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response: No.

27. **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: If confirmed as a United States District Judge, to the extent that I would be involved in organizing or providing trainings on behalf of the court, I would ensure that such trainings are consistent with the law.

28. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?**

Response: Yes.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed as a United States District Judge, and presented this issue, I will faithfully and impartially follow the law and apply binding Supreme Court and Ninth Circuit precedent.

30. **Is the criminal justice system systemically racist?**

Response: In my courtroom, every party is treated fairly, regardless of their race, gender religion or political affiliation. If confirmed as a United States District Judge, I will faithfully and impartially follow the law and apply binding Supreme Court and Ninth Circuit precedent.

31. **President Biden has created a commission to advise him on reforming the U.S. Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to express an opinion on this issue. This is a matter of policy to be decided by Congress.

32. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No.

33. **What do you understand to be the original public meaning of the Second Amendment?**

Response: In *New York Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that the Second Amendment protects the right of a law-abiding citizen to possess a gun inside and outside of the home for self-defense. *See also McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

34. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: In *New York Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that if a regulation places any restrictions on the Second Amendment, the government must show that the regulation is consistent with this Nation's historical tradition of firearm regulation.

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

Response: Yes.

36. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: No.

37. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: No.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed as a United States District Judge, I will faithfully and impartially follow the law and apply binding Supreme Court and Ninth Circuit precedent.

39. **Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.**

Response: Prosecutorial discretion refers to the executive's sole ability to make decisions on charging, plea bargaining and sentence recommendations to the court. Substantive administrative rule change refers to binding requirements or procedures formally adopted by an agency.

40. **Does the President have the authority to abolish the death penalty?**

Response: No.

41. **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. 2320 (2021), the Supreme Court held that the Centers for Disease Control and Prevention (CDC) exceeded its statutory authority by issuing a nationwide eviction moratorium. The Supreme Court held that congressional authorization was required to extend the moratorium.

42. **You currently serve as a judge on the San Diego Superior Court. According to the numbers provided to the committee, less than one-fifth of your cases involved civil law matters, you have not presided over a single jury trial, and have not written any opinions concerning constitutional issues.**

a. **What professional experience do you have that qualifies you to serve as a federal judge?**

Response: For 12 years I worked as a prosecutor, including one year at the San Diego City Attorney's Office and 11 years at the San Diego District Attorney's Office. For eight and a half of those years, I worked in the Gang Prosecution Unit. While a prosecutor I tried over 50 jury trials to verdict, including several homicide cases, violent gang shootings, assaults, robberies and sexual assault cases. I've handled complicated

matters involving wiretap investigations, criminal gang conspiracy investigations and grand jury proceedings. While handling these matters, I had to become an expert in admitting different types of evidence, including scientific expert testimony and digital evidence.

Since becoming a Superior Court Judge in 2017, for two years, I presided over a misdemeanor and felony arraignment calendar making detention decisions on thousands of cases and taking hundreds, if not thousands of guilty pleas and conducting sentencing hearings.

In 2020, I then moved to a felony settlement department where I presided over thousands of serious felony cases and took hundreds, if not thousands of guilty pleas and conducted sentencing hearings. I also conducted review hearings and probation modification hearings. I was in the felony settlement department for two years.

In April 2022, after only four years on the bench, I became the Supervising Judge for the North County branch of the San Diego Superior Court, the largest branch court in the county. I am the most junior Supervising Judge in the County of San Diego. As the Supervising Judge, I preside over the criminal master calendar and handle case assignments to other judges, conduct arraignments, take guilty pleas, preside over evidentiary hearings, conduct settlement conferences, sentencing hearings and probation revocation hearings. I have also conducted civil bench trials. I currently supervise 22 judicial officers.

Throughout my professional career, I have shown a dedication to hard work, strong ethics, a commitment to following the law, while keeping an open mind and treating all parties with respect. If confirmed as a United States District Judge, I will continue to display those traits and faithfully and impartially apply the law and binding Supreme Court and Ninth Circuit precedent.

Senator Ben Sasse
Questions for the Record for James Edward Simmons, Jr.
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
November 30, 2022

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

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

   Response: In the five years that I have been a Superior Court Judge, my judicial philosophy has focused on keeping an open mind, being prepared, faithfully following the law, and treating all parties with respect.

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

   Response: I do not subscribe to any particular method of constitutional interpretation. If confirmed as a United States District Judge, I would faithfully apply Supreme Court and Ninth Circuit precedent regarding interpretative methods of analysis.

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

   Response: I do not subscribe to any particular method of constitutional interpretation. The Supreme Court has described the starting point for review of a statute is the "ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County* 140 S. Ct. 1731, 1738. When "the meaning of the statute's terms [are] plain, [the Court's] job is at an end." *Id.* at 1749. If confirmed as a United States District Judge, I would faithfully apply Supreme Court and Ninth Circuit precedent regarding interpretative methods of analysis.

5. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

   Response: I believe the Constitution has a fixed meaning and does not change over time, unless it is amended by the process set forth in Article V. If confirmed as a United States District Judge, I would faithfully apply Supreme Court and Ninth Circuit precedent in analyzing issues of constitutional interpretation.

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

Response: There is no particular Supreme Court Justice whose jurisprudence I most admire. If confirmed as a United States District Judge, I would apply Supreme Court precedent without regard to the particular justice who authored them. Further, I commit to keep an open mind, always be prepared, faithfully follow the law, and treat all parties with respect, applying Supreme Court and Ninth Circuit precedent.

7. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?**

Response: If confirmed as a United States District Judge in the Southern District of California, I would be bound by Supreme Court and Ninth Circuit precedent. A decision of the Ninth Circuit is binding on courts in the Ninth Circuit unless it is overruled by the Supreme Court or an *en banc* panel of the Ninth Circuit.

8. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?**

Response: Please see my response to Question 7.

9. **What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?**

Response: If confirmed as a United States District Judge and I was called upon to interpret a statute, I would first look to the text of the statute and any binding Supreme Court or Ninth Circuit precedent. I would apply binding precedent. If, however, the text of the statute was ambiguous and there was no binding precedent, I would look to methods of interpretation applied by the Supreme Court and Ninth Circuit to analogous statutes, as well as persuasive authority from other circuits. As a last resort, if the statute was still ambiguous, I would consider legislative history being mindful that certain types of legislative history have been found by the Supreme Court to be more authoritative than others.

10. **If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?**

Response: Race and ethnicity should not factor into sentencing a defendant for a particular crime. 18 U.S.C. § 3553(a) provides the factors judges should consider in imposing a sentence, including, "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

Senator Josh Hawley
Questions for the Record

James Simmons
Nominee, Southern District of California

1. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

    a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

    Response: I am not familiar with the sentencing practices of then-Judge Ketanji Brown Jackson. However, if confirmed as a United States District Judge, in any sentencing decision, I would analyze the facts of the specific case and I would consider the factors listed in 18 U.S.C. § 3553(a). I will sentence each individual based on the specific facts of that person's case, following all binding precedent.

    b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

    Response: Please see my response to Question 1(a).

    c. **The enhancement for offenses involving the use of a computer**

    Response: Please see my response to Question 1(a).

    d. **The enhancements for the number of images involved**

    Response: Please see my response to Question 1(a).

2. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

    a. **Do you agree that the penalties should be aligned?**

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to express an opinion on this issue. This is a question best left to policymakers.

b. If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?

Response: Please see my response to Question 2(a).

c. If an offender before you is charged only with possession even though uncontested evidence shows the offender also committed the crime of receiving child pornography, will you aim to sentence the offender to between 5 and 10 years?

Response: Please see my response to Question 2(a).

3. 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 the context of this quote. If confirmed as a United States District Judge, I will faithfully and impartially apply the law and any binding Supreme Court and Ninth Circuit precedent irrespective of my personal views.

b. If not, do you think it is a violation of the judicial oath to hold that philosophy?

Response: A judge must faithfully apply the law and follow binding Supreme Court precedent, which I will do, if confirmed.

4. Do you believe that the Supreme Court's ruling in *Dobbs* v. *Jackson Women's Health Organization* is settled law?

Response: Yes.

5. What is the standard for each kind of abstention in the court to which you have been nominated?

Response: The Supreme Court has recognized multiple abstention doctrines in which a federal court should abstain from hearing a case in deference to a state court's authority over a case. The doctrines are *Pullman*, *Burford*, *Younger*, *Colorado River*

and *Rooker-Feldman*, which is not technically an abstention doctrine, but nonetheless limits federal courts from hearing certain types of claims.

The *Pullman* abstention doctrine advises that federal courts should abstain from considering a federal constitutional challenge to a state law when the state court proceedings can resolve the issue in a way that avoids the federal issue. *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941).

The *Burford* abstention doctrine directs federal courts to abstain from exercising jurisdiction if a case presents difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case at bar or if decisions in a federal forum would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern. *City of Tucson v. U.S. West Communication, Inc.*, 284 F. 3d 1128, 1132 (9th Cir. 2002); *Burford v. Sun Oil Company*, 319 U.S. 315 (1943).

The *Younger* abstention doctrine advises that federal courts should abstain from intervening in pending state criminal, civil or administrative proceedings when important state interests are involved. *Younger v. Harris*, 401 U.S. 37 (1971).

The *Colorado River* abstention doctrine applies whenever there are parallel proceedings in state court involving the same parties and the same issues. Abstention under this doctrine is based on judicial administration and conservation of judicial resources. *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976).

The *Rooker-Feldman* doctrine, while not technically an abstention doctrine, provides that federal courts below the United States Supreme Court cannot exercise jurisdiction over a state court's decision. If a party seeks relief, they must appeal directly to the Supreme Court. *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

6. **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.

7. What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?

Response: I would apply the original public meaning of the Constitution to any provision where the Supreme Court has indicated that it is to be considered. See e.g, *New York Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2011 (2022) (Second Amendment). If confirmed, I will faithfully apply the law and any binding Supreme Court and Ninth Circuit precedent to all cases including precedent regarding the specific interpretative methodology to use.

8. Do you consider legislative history when interpreting legal texts?

Response: If the statute or regulation is clear, I would not consider legislative history. If the statute was ambiguous, I would consider legislative history using the framework outlined by the Supreme Court in *Garcia v. U.S.*, 469 U.S. 70 (1984). In *Garcia*, the Supreme Court held that when reviewing legislative history, 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 Congressman involved in drafting and studying proposed legislation." *Id.* at 76. Reports are "more authoritative" than comments from the floor. *Id.*

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: Please see my response to Question 8.

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 am not aware of any Supreme Court precedent that allows courts to consult the laws of foreign nations and will decline to do so absent any such precedent.

9. 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 *Baze v. Rees*, 553 U.S. 35 (2008) and *Glossip v. Gross*, 576 U.S. 863 (2015), the Supreme Court held that a petitioner challenging an execution protocol under the Eighth Amendment must establish that the method presents a risk that is "sure or very likely to cause serious illness and needless suffering and give rise to sufficiently imminent dangers." *Baze*, 553 U.S. at 50. (internal citations and

quotations omitted). A petitioner must also identify an alternative procedure that is feasible, readily implemented, and in fact significantly reduce a substantial risk of severe pain. *Id.* at 52.

10. 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.

11. 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: No.

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 as a United States District Judge, I will faithfully follow the law and apply binding Supreme Court and Ninth 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 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 Div., Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990), the Supreme Court held that a law that burdens the free exercise of religion is not subject to strict scrutiny if the law is neutral and generally applicable. *Id.* at 878-882. In contrast, the Supreme Court has recognized that a law is not neutral and generally applicable if the "object of a law is to infringe upon or restrict practices because of their religious motivation," *Church of Lukumi Bablau Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993), or if a facially neutral law has been applied with "a clear and impermissible hostility toward the sincere religious beliefs" of an individual, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1729-1731 (2018), or if the regulation "treat[s] any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021).

In those cases, the government must show that said regulation is narrowly tailored to meet a compelling government interest. See, e.g., *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021).

14. 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 13. Additionally, when a state provides tuition assistance to private schools, it cannot exclude payments to religious based schools, *Carson v. Makin*, 142 S. Ct. 1987 (2022), nor can state action restrict an individual from engaging in private, personal religious observation while at work, *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022). Strict scrutiny applies.

15. 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 Free Exercise Clause protects sincerely-held religious beliefs. *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829 (1989). In *Frazee*, the Court explained, "we reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization." *Id.* at 834. However, "[o]nly beliefs rooted in religion are protected by the Free Exercise Clause." *Id.* at 833. The Ninth Circuit has held that "the First Amendment does not extend to so-called religions which ... are obviously shams and absurdities and whose members are patently devoid of religion sincerity." *Callahan v. Woods*, 658 F. 2d 679, 683 (9th Cir. 1981). Further, the Supreme Court has held that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Indiana Employment Sec. Division,* 450 U.S. 707, 714 (1981).

16. 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 laws that banned possession of a handgun in a home

was unconstitutional, as the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *Id.* at 590.

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.

17. 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: It appears that Justice Holmes meant that the 14th Amendment did not 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: In *Ferguson v. Sharpa*, 372 U.S. 726 (1963), the Supreme Court abrogated *Lochner*. If confirmed, I will faithfully follow the law and apply binding Supreme Court and Ninth Circuit precedent.

18. 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 sitting judge and judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully follow the law and apply binding Supreme Court and Ninth Circuit precedent.

a. If so, what are they?

Response: Please see my response to Question 18.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: Please see my response to Question 18.

19. 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 judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully follow the law and apply binding Supreme Court and Ninth Circuit precedent.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my response to Question 19(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: The Supreme Court has held that a company holding more than 80% of the market share supports a finding of monopoly power. *Eastman Kodak Company v. Image Technical Services, Inc.*, 504 U.S. 451 (1992). The Ninth Circuit has held that "a 65% market share" can "establish a prima facie case of market power." *Image Technical Services, Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1206 (9th Cir. 1997). Further, in *Rebel Oil Co., Inc. v. Atlantic Richfield Co.*, 51 F.3d 1421 (9th Cir. 1995), the Ninth Circuit held that in an attempted monopolization claim, "a 44% market share demonstrates market power if entry barriers are high and competitors are unable to expand their output in response to supracompetitive pricing." *Id.* at 1438.

20. Please describe your understanding of the "federal common law."

Response: Generally speaking, there is no federal common law. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). However, the Court "has recognized the need and authority in some limited areas to formulate what has come to be known as federal common law" and these instances "fall into essentially two categories: those in which a federal rule of decision is necessary to protect uniquely federal interests, and those in which Congress has given the courts the power to develop substantive law." *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981). "Federal common law exists only in such narrow areas as those concerned with the rights and obligations of the United States, interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations and admiralty cases." *Id.* at 641. "Federal common law also may come into play when Congress has vested

jurisdiction in the federal courts and empowered them to create governing rules of law." *Id.* at 643.

21. 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 Supreme Court has ruled that state constitutional law should be applied in such situations. *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938). If confirmed, I will faithfully follow the law and apply binding Supreme Court and Ninth Circuit precedent.

a. Do you believe that identical texts should be interpreted identically?

Response: Please see my response to Question 21.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: A state constitution may provide greater protections than federal provisions.

22. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: As a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether a particular case was correctly decided or not. However, because *Brown v. Board of Education* is unlikely to be relitigated, I am comfortable answering that yes, I believe it was correctly decided.

23. Do federal courts have the legal authority to issue nationwide injunctions?

Response: The Supreme Court has not barred the issuance of nationwide or universal injunctions. Injunctions generally are governed by Federal Rule of Civil Procedure 65. The Ninth Circuit has held that crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents. *California v. Azar*, 911 F. 3d 558, 582 (9th Cir. 2018). Further, "although there is no bar against … nationwide relief in federal district or circuit court, such broad relief must be necessary to give prevailing parties the relief to which they are entitled." *Id.*

a. If so, what is the source of that authority?

Response: Please see my response to Question 23.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Please see my response to Question 23.

24. 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 23.

25. What is your understanding of the role of federalism in our constitutional system?

Response: Federalism is central to our form of government, the division of power between the federal government and the states. The federal government has enumerated powers in the Constitution and states retain all powers not specifically reserved to the federal government.

26. 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 5.

27. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: There are no relative advantages or disadvantages of awarding damages versus injunctive relief. It is very fact and case specific and depends on the requested relief by the parties in an action. Generally, damages compensate a past harm and injunctive relief prevents a future harm. If confirmed, I will faithfully follow the law and apply binding Supreme Court and Ninth Circuit precedent.

28. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court discussed substantive due process rights that were unenumerated in the Constitution, including the right to marry (*Loving v. Virginia*, 388 U.S. 1 (1967)); right to have children (*Skinner v. Oklahoma*, 316 U.S. 535 (1942)); right to direct education and upbringing of child (*Meyer v. Nebraska*, 262 U.S. 390 (1923)); right to marital

privacy and contraception (*Griswold v. Connecticut*, 381 U.S. 479 (1965)). The Court provided a two-part test to determine if an unenumerated right is in the Constitution: (1) the right must be deeply rooted in this nation's history and tradition; and (2) there must be a careful description of the asserted right. *Glucksberg*, 521 U.S., at 720-721. If confirmed, I would apply this framework and any other Supreme Court and Ninth Circuit precedent.

29. 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 13.

Further, the Supreme Court has recognized that sincerely held religious beliefs are protected by the Free Exercise Clause of the First Amendment. *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829 (1989). Any governmental burden by states on the free exercise of religion must be neutral and generally applicable. *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the federal 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 government interest." Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 705 (2014). If the government action does not survive strict scrutiny, the law is unconstitutional. *See also Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that the Free Exercise Clause of the First Amendment protects "not only the right to harbor private religious beliefs inwardly and

secretly ... [but] protect[s] the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life. *Id.* at 2421.

Further, in *Wallace v. Jaffree*, 472 U.S. 38 (1985), the Supreme Court held that the First Amendment was adopted to "curtail the power of Congress to interfere with the individual's freedom to believe, to worship, and to express himself in accordance with the dictates of his own conscience." *Id.* at 49.

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 Questions 13 and 29a.

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 15.

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 of 1993 (RFRA) prohibits the federal 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 government interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014). If the government action does not survive strict scrutiny, the law is unconstitutional. *See also Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (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.

30. 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 quote, but I understand it to mean that a judge should not make decisions based on their personal views. A judge must faithfully follow the law, irrespective of their personal views. If confirmed, I will faithfully follow the law and apply binding Supreme Court and Ninth Circuit precedent.

31. 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: Not applicable.

32. 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.

33. Do you believe America is a systemically racist country?

Response: I believe that America is the greatest country in the world. We are not a perfect country, but no country is perfect. We continue to strive toward the mission of our Founding Fathers to be a more perfect union. Only in this great country could someone like me who grew up in Section 8 housing be up for consideration for confirmation to the United States District Court for the Southern District of California.

34. Have you ever taken a position in litigation that conflicted with your personal views?

Response: No.

35. How did you handle the situation?

Response: Not applicable.

36. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

37. Which of the Federalist Papers has most shaped your views of the law?

Response: No particular essay in the Federalist Papers has shaped my views of the law.

38. Do you believe that an unborn child is a human being?

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully follow the law and apply Supreme Court and Ninth Circuit precedent, including *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

39. 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. I testified during a deposition while in law school for the wrongful death lawsuit filed in my mother's case that I previously disclosed in my Senate Questionnaire. I am unaware if a record is available of that testimony or not.

40. 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.

41. 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.

42. 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: Not applicable.

43. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Not applicable.

44. 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: As a judicial nominee, I took an oath during my appearance at the Senate Judiciary Committee that the testimony I would provide would be the truth. I have answered each question asked of me truthfully and to the best of my ability and in a manner consistent with ethical obligations as both a sitting judge and judicial nominee.

Questions from Senator Thom Tillis
for James Edward Simmons, Jr.
Nominee to be United States District Judge for the Southern District of California

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

   Response: Yes

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary defines judicial activism as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." *Judicial Activism*, Black's Law Dictionary (11th ed. 2019). Judicial activism is inappropriate.

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.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Faithfully interpreting the law could sometimes result in an undesirable outcome, but if I were confirmed as a United States District Judge, I will apply the law impartially and faithfully without regard to any personal views or desired outcome.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: If confirmed as a United States District Judge, I will faithfully and impartially apply Supreme Court and Ninth Circuit precedent regarding the Second Amendment, including *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of*

Chicago, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022).

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: As a sitting judge and judicial nominee, it is generally inappropriate for me to comment on any hypothetical legal scenario that may come before me. If confirmed, I would faithfully and impartially apply Supreme Court and Ninth Circuit precedent regarding laws or regulations restricting the Second Amendment and relating to restrictions imposed during the COVID-19 pandemic, including, but not limited to *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020); *Tandon v. Newsom* 141 S. Ct. 1294 (2021); and *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022).

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: In *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court held that qualified immunity analysis must follow a two-part inquiry: (1) taken in the light most favorable to the party asserting the injury, whether the facts alleged show the officer's conduct violated a constitutional right; and (2) whether the constitutional right was clearly established at the time of the alleged violation. If both prongs are met, then qualified immunity does not apply. See also *Pearson v. Callahan*, 555 U.S. 223 (2009).

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: This is a question best left to policy makers. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent to any case in which the issue of qualified immunity was presented before me.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: This is a question best left to policy makers. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent to any case in which the issue of qualified immunity was presented before me.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the

standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully and impartially apply the Patent Act, 35 U.S.C. § 101, and binding Supreme Court and Ninth Circuit precedent to any case brought before me. Such precedents would include *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013); and *Alice Corp* Pty. Ltd. *v. CLS Bank International*, 573 U.S. 208 (2014).

13. **How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.**

    a. ***ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

    Response: As a sitting judge and judicial nominee, it is generally inappropriate for me to comment on any hypothetical legal scenario that may come before me. If confirmed as a United States District Judge, I will faithfully and impartially apply Supreme Court and Ninth Circuit precedent regarding patent law including *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013); and *Alice Corp* Pty. Ltd. *v. CLS Bank International*, 573 U.S. 208 (2014).

    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: Please see my response to Question 13(a). Additionally, as a sitting judge and a judicial nominee, it is generally inappropriate for me to express an opinion regarding whether the current jurisprudence provides clarity and consistency needed to incentivize innovation. If confirmed as a United States District Judge, I will faithfully and impartially apply Supreme Court and Ninth Circuit precedent in regard to the Supreme Court's ineligibility tests.

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: In my 12 years of practicing law as a prosecutor and five years as a Superior Court Judge, I have no experience handling any cases involving copyright law.

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: In my 12 years of practicing law as a prosecutor and five years as a Superior Court Judge, I have no experience 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: In my 12 years of practicing law as a prosecutor and five years as a Superior Court Judge, I have no experience addressing intermediary liability for online service providers that host unlawful content posted by users.

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: In my 12 years as a prosecutor and five years as a Superior Court Judge, I have handled cases involving criminal threats and the use of music lyrics as evidence of a crime. In such cases, First Amendment claims have been raised and litigated. I have no experience with intellectual property issues, including copyrights.

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 confirmed, when a case requires statutory interpretation, I would first look to the text of the statute and then determine whether the Supreme Court or Ninth Circuit have previously interpreted the statute at hand. If the text of the statute is clear, my inquiry would end there. If, however, the text of the statute is ambiguous and there is no binding precedent, I would look to the methods of interpretation applied by the Supreme Court and Ninth Circuit addressing analogous statutes and any persuasive authority from other circuits and consider legislative

history, when approval with the limitations outlined by the Supreme Court. See *Garcia v. U.S.*, 469 U.S. 76 (1984).

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: If confirmed, I would apply binding Supreme Court and Ninth Circuit precedent in deciding the level of deference to give an agency's interpretation, depending on the facts and circumstances of the case, including deference applicable under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); *Skidmore v. Swift & Co,*, 323 U.S. 134 (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: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully and impartially apply the law to the facts and follow any binding Supreme Court and Ninth Circuit 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: If confirmed, I will interpret the DMCA as written and apply binding Supreme Court and Ninth Circuit precedent to any case brought before me.

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 interpret the DMCA as written and apply binding Supreme Court and Ninth Circuit precedent to any case brought before me.

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some

instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: In the Southern District of California, there are no divisions with a single federal district judge and cases are assigned randomly, thus this is not a problem in the Southern District of California.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: Please see my response to Question 18(a).

c. Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?

Response: No. If confirmed, I will faithfully and impartially follow the law and binding Supreme Court and Ninth Circuit precedent consistent with the Code of Conduct for United State Judges.

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: If confirmed, I will faithfully and impartially follow the law and binding Supreme Court and Ninth Circuit precedent consistent with the Code of Conduct for United State Judges.

19. In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.

a. What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?

Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully and impartially apply Supreme Court and Ninth Circuit precedent.

b. Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?

Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully and impartially apply Supreme Court and Ninth Circuit precedent.

20. When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?

a. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully and impartially apply Supreme Court and Ninth Circuit precedent.

b. To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: In the Southern District of California, all district judges sit in San Diego, so a local rule would be unnecessary to address the concern expressed in this question.

21. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

a. If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?

Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully and impartially apply Supreme Court and Ninth Circuit precedent.

b. Would five mandamus reversals be sufficient? Ten? Twenty?

Response: As a sitting judge and a judicial nominee, it would be inappropriate for me to express an opinion on this issue. If confirmed, I will faithfully and impartially apply Supreme Court and Ninth Circuit precedent.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Ms. Amy Lefkowitz Solomon
Nominee to be Assistant Attorney General, Office of Justice Programs

1. **In remarks you made in July 2022, you stated, "Inspired by the president's executive order on advancing equity and racial justice, we are for the first time giving priority consideration to projects that promote racial justice and to applicants that can demonstrate that their solicitations and competencies are enhanced because they identify as a culturally specific organization. I am so fired up about this." Please explain what it means to give "priority" to applicants that "identify as a culturally specific organization."**

   I believe that federal resources should be within reach to all communities, no matter the size of the jurisdiction or whether it is located in a rural or urban area. And we often hear from stakeholders that federal resources may not always reach the communities that need them most. "Priority consideration" helps OJP remove barriers to access and opportunity for communities that have been historically marginalized and underserved when applicants can demonstrate that their status as a culturally specific organization will enhance their chances for success in a given project.

   In practice, this means that peer reviewers would continue to do independently assess, as they always have, which applications are strongest and "fundable," including an assessment of technical merit and the likelihood that the project will successfully deliver results based on the stated program objectives. After OJP staff receive recommendations of the fundable proposals from peer reviewers, they can then consider giving additional weight to those applicants from historically underserved and marginalized communities.

2. **Please define what a "culturally specific organization" is for purposes of giving applicants priority in consideration for federal programs.**

   OJP solicitations typically define culturally specific organizations as private nonprofit or tribal organizations staffed and led by members of that community and whose primary purpose is to provide culturally specific services to, among others, Black people, Hispanics and Latino/a/e people, Native American and other Indigenous peoples of North America (including Alaska Natives, Eskimos, and Aleuts), Asian Americans, Native Hawaiians, and/or Pacific Islanders.

3. **Some politicians have suggested that DOJ Byrne grants be conditioned on whether a jurisdiction enforces certain federal laws.**

   a. **Do you support such a restriction?**

b. **If you do, would you support requiring that the jurisdictions enforce all federal laws, including immigration laws, or would certain federal laws not be important enough in your view?**

At OJP, we implement the federal laws in accordance with Congressional intentions. If I am so fortunate as to be confirmed for this position, I will continue to implement the laws as written, with advice from legal counsel as needed.

4. **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."**

I am not an attorney. If I am confirmed for the Assistant Attorney General position, which oversees a grantmaking organization, I will rely on legal counsel to inform any legal decisions that may be required.

5. **Do parents have a constitutional right to direct the education of their children?**

This appears to be a legal question. I am not an attorney. If I am fortunate enough to be confirmed for the Assistant Attorney General position, I will rely on legal counsel to inform any legal decisions as needed.

6. **Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.**

No. I am deeply committed to working with law enforcement, and I know that neighborhoods are safer when police have the tools and training to do their jobs, and when community trust is strong. I have worked with law enforcement – police and sheriffs in particular - over many years, and am humbled to have letters of support from national police organizations and many current and former police chiefs and sheriffs.

7. **Are law enforcement partnerships key to preventing acts of terror?**

Yes.

8. **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?**

Keeping communities safe is my top priority, and if I am confirmed for this role, I will ensure OJP is leveraging its resources to serve this mission.

9. **Is the right to petition the government a constitutionally protected right?**

This appears to be a legal question. I am not an attorney. If I am fortunate enough to be confirmed for the Assistant Attorney General position, I will rely on legal counsel to inform any legal decisions as needed.

10. **What role should empathy play in sentencing defendants?**

I am not an attorney and sentencing decisions would be outside the scope of the position of Assistant Attorney General for the Office of Justice Programs.

11. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**
    a. **Was *Brown v. Board of Education* correctly decided?**
    b. **Was *Loving v. Virginia* correctly decided?**
    c. **Was *Roe v. Wade* correctly decided?**
    d. **Was *Planned Parenthood v. Casey* correctly decided?**
    e. **Was *Griswold v. Connecticut* correctly decided?**
    f. **Was *Gonzales v. Carhart* correctly decided?**
    g. **Was *McDonald v. City of Chicago* correctly decided?**
    h. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
    i. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**
    j. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

I am not an attorney. Legal analysis is outside the scope of my expertise and the position of Assistant Attorney General for the Office of Justice Programs.

12. **Is threatening Supreme Court justices right or wrong?**

Violence or threats of violence against anyone – including Supreme Court justices – is wrong.

13. **Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

I am not an attorney. Legal analysis is outside the scope of my expertise and the position of Assistant Attorney General for the Office of Justice Programs.

14. **Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

I am not an attorney. Legal analysis is outside the scope of my expertise and the position of Assistant Attorney General for the Office of Justice Programs.

15. **During your selection process, did you talk with anyone from or anyone directly associated with the Raben Group or the Committee for a Fair Judiciary? If so, what was the nature of those discussions?**

After I was nominated, I consulted with many former Department of Justice colleagues (including both Republican and Democratic appointees), including Robert Raben who is a former colleague from the 1990s. I also talked with Katharine Huffman from the Raben Group. She is a personal friend and that was the context for two brief conversations over the last year. To my knowledge, I have not had any contacts with the Committee for a Fair Judiciary.

16. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

To my knowledge, during my selection process I have not had any contacts with Demand Justice.

17. **During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

To my knowledge, during my selection process I have not had any contacts with the American Constitution Society.

18. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? 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, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

To my knowledge, during my selection process I have not had any contacts with Arabella Advisors.

19. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

To my knowledge, during my selection process I have not had any contacts with the Open Society Foundation (OSF). That said, I do know people at OSF and have engaged

with them on corrections and reentry issues from time to time – but not since rejoining the Department of Justice in 2021.

20. **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?**
    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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**
    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, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

To my knowledge, during my selection process I have not had any contact with Demand Justice. I may have crossed paths with Brian Fallon several years ago when he was at the Department of Justice, but we have not been in touch since then.

21. **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?**
    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?**
    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?**

To my knowledge, during my selection process I have not had any contact with Demand Justice. I do know Daniel Goldberg from his prior employment with the Department of Justice, and I have had one brief contact with him in his role as staff to Senator Klobuchar.

22. **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?**

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.**
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.**
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.**

To my knowledge, during my selection process I have not had any contacts with Arabella Advisors or any of their subsidiaries. That said, I do know people at Arabella Advisors from my prior work on reentry issues, but have not had any contact since rejoining the Department of Justice in 2021.

23. **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 Foundations 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?**
    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**
    c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

    See answer to #19.

24. **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?**
    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?**
    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?**

To my knowledge, during my selection process I have not had any contacts with Fix the Court.

25. **The Raben Group is "a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors." It manages the Committee for a Fair Judiciary.**
    a. **Has anyone associated with The Raben Group or the Committee for a Fair Judiciary 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?**
    b. **Are you currently in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**
    c. **Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

See answer to #15.

26. **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).**

I was appointed to serve as Principal Deputy Assistant Attorney General beginning in May 2021. In early 2022, after having served as Acting Assistant Attorney General and then the Principal Deputy, I was asked by the Department of Justice White House liaison if I would consider being nominated for the Assistant Attorney General position. I agreed and in February 2022 I had several interviews with White House PPO. My nomination was announced in May 2022.

27. **Please explain, with particularity, the process whereby you answered these questions.**

The Department of Justice received these questions on December 7, 2022 and shared them with me that afternoon. I drafted the answers to the questions on my own, shared them with our Office of Legislative Affairs for review, and authorized their transmission to the Committee on December 12, 2022.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Amy L. Solomon, nominated to be Assistant Attorney General for Office of Justice Programs

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Is racial discrimination wrong?**

   Yes.

2. **Is the criminal justice system systemically racist?**

   While I do not think the entire criminal justice system is racist, I do think we must acknowledge this country's history with slavery and discrimination and the fact that racism still exists. There are racial disparities at every point in the criminal justice system, and I am committed to reducing those disparities and promoting fairness in the criminal justice system.

3. **You worked at Arnold Ventures LLC, a group founded by billionaire former Enron executive and financier of left-wing causes, John D. Arnold.**

   a. **Did you serve as the Vice President for Criminal Justice?**

      I served as a Vice President for Criminal Justice, with a focus on the corrections portfolio.

   b. **How much money has Arnold Ventures made from local governments in helping them establish pretrial risk assessment tools?**

      I did not manage the pretrial portfolio and cannot speak to this question.

   c. **How much money has Arnold spent lobbying against cash bail, and for so-called "bail reform" which includes use of products and tools like the Arnold Pretrial Risk Assessment tool?**

      I did not manage the pretrial portfolio and cannot speak to this question.

4. **Can you commit to recusing yourself from overseeing any grant—or even being involved in any grant—that would be going to a group that you gave a grant to while at Arnold Ventures?**

   I commit to following the advice of Department of Justice ethics attorneys with respect to any potential recusal decisions.

Senator Josh Hawley
Questions for the Record

Amy Solomon
Nominee, Assistant Attorney General for DOJ Office of Justice Programs

1. **In remarks for the rollout of the President's budget for Fiscal Year 2023, you said the administration will be "giving priority" to an applicant who identifies as a culturally-specific organization." What does "culturally specific organization" mean?**

   OJP solicitations typically define culturally specific organizations as private nonprofit or tribal organizations staffed and led by members of that community and whose primary purpose is to provide culturally specific services to, among others, Black people, Hispanics and Latino/a/e people, Native American and other Indigenous peoples of North America (including Alaska Natives, Eskimos, and Aleuts), Asian Americans, Native Hawaiians, and/or Pacific Islanders.

Questions from Senator Thom Tillis
for Amy Lefkowitz Solomon
Nominee to be Assistant Attorney General, Office of Justice Programs

1. **Ms. Solomon, you spoke out publicly in support of President Biden's executive order on advancing equity and racial justice. What specific provisions of this executive order do you support? What is your understanding of how this executive order would impact your work at OJP and which entities receive funding and assistance?**

   In my view, the President's *Executive Order on Advancing Racial Equity and Support For Underserved Communities through the Federal Government* challenges the federal government to engage with communities that have often been hard hit by crime and poverty, and have had little access to government resources.

   I believe that federal resources should be within reach to all communities, no matter the size of the jurisdiction or whether it is located in a rural or urban area. And we often hear from stakeholders that federal resources may not always reach the communities that need them most. "Priority consideration" helps OJP remove barriers to access and opportunity for communities that have been historically marginalized and underserved when applicants can demonstrate that their status as a culturally specific organization will enhance their chances for success in a given project.

   In practice, this means that peer reviewers would continue to do independently assess, as they always have, which applications are strongest and "fundable," including an assessment of technical merit and the likelihood that the project will successfully deliver results based on the stated program objectives. After OJP staff receive recommendations of the fundable proposals from peer reviewers, they can then consider giving additional weight to those applicants from historically underserved and marginalized communities.

2. **Do you commit to working with Congress to implement the grant opportunities made available under the Bipartisan Safer Communities Act (BSCA)?**

   Absolutely. Successful implementation of all Bipartisan Safer Communities Act grant programs managed by OJP is a top priority.

3. **What steps have been taken to implement the grant programs under the BSCA If the programs are not yet available, when do you anticipate OJP will make all opportunities available which were identified in the BSCA?**

   OJP has already moved swiftly and deeply to implement several sections of BSCA. It has already awarded FY22 grants for:

   - Community Violence Intervention and Prevention Initiative (CVIPI) ($50 million) –OJP received a large number of applicants for its FY22 solicitation and was therefore able to award a total of $100 million for FY22 to 47 grantees for this initiative.

- BJA's STOP School Violence Program ($40 million) – BJA received a large number of applicants for its FY22 solicitation; accordingly, the supplemental funding allowed OJP to almost double the number of awards.

A full list of awardees is available at https://www.ojp.gov/funding/bja-fy22-grant-awards.

In addition, OJP has issued the following solicitations:

- BJA's Byrne State Crisis Intervention Program (Byrne SCIP) solicitation for FY22 and FY23 ($150 million per year to be allocated by formula). The Byrne SCIP solicitation opened on October 19, and BJA will be accepting applications until December 19. The solicitation is available at https://bja.ojp.gov/funding/opportunities/o-bja-2023-171458.

- BJS' National Criminal History Improvement Program (NCHIP) for FY22 and FY23 ($40 million per year) to help states address their implementation challenges in collecting records that are currently not centralized. The solicitation is available at https://bjs.ojp.gov/funding/opportunities/o-bjs-2023-171464.

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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acwilliams@jonesday.com

November 28, 2022

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Magistrate Judge Jonathan James Canada Grey to the United States District Court for the Eastern District of Michigan

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Jonathan James Canada Grey, who has been nominated by the President to the United States District Court for the Eastern District of Michigan. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Magistrate Judge Grey is **"Well Qualified"** to serve on the United States District Court for the Eastern District of Michigan.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee
on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Magistrate Judge Jonathan James Canada Grey (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

George W. Golliday, III
13934 Grandmont; Detroit, MI 48227
georgegolliday@aol.com;
(313) 477-9318

11/24/2022

The Honorable Richard J. Durbin, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: Nomination of Jonathan C. Grey for Federal District Court Judge, Eastern District of Michigan

Chairman Durbin and Ranking Member Grassley:

Please accept this endorsement, in the spirit and honor of its writing, for the support, nomination, and congressional approval of Jonathan C. Grey as a Federal District Court Judge in the Eastern District of Michigan.

My name is George W. Golliday, III, and I am a Retired Special Agent (1811) of the United States Department of Homeland Security (DHS), Homeland Security Investigations (HSI), with 28 years of experience. In that capacity, I conducted both criminal and civil investigations, and served as an affiant and expert in federal court matters. I also have extensive background and experience in DEI, EEO, Affirmative Employment and Recruitment programming.

As a Special Agent, I worked with Judge Grey for several years when he served as an Assistant United States Attorney (AUSA) in the Eastern District of Michigan. Although I worked other assignments and he worked other assignment, we always maintained a close working Law

Enforcement partnership, thus culminating a great friendship. Judge Grey worked on each of my programs in some capacity while serving as an AUSA.

Throughout the years, Judge Grey has proven to be an individual of keen deliberate focus, one who supports and promotes fairness and equity for all people, and functions daily with humility while making balanced decisions. He knows how to be tough when he needs to be, not because he can. While tough, Judge Grey also has the keen ability of exercising compassion and humanity when engaging people. God and family are his pillars!

For these reasons, I graciously affirm Judge Grey.
George W. Golliday, III
George W. Golliday, III

U.S. Department of Justice
United States Attorney
Southern District of Ohio

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November 26, 2022

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: Honorable Jonathan Grey

Dear Senators Durbin and Grassley:

I support the nomination of Magistrate Judge Jonathan Grey for appointment to the United States District Court for the Eastern District of Michigan. I have served as an Assistant United States Attorney (AUSA) in the Columbus, Ohio office for more than 33 years. I am also a retired Captain in the United States Navy, Judge Advocate General's Corps, having served more than three years on active-duty and 29 years in the reserve program.

I met Jonathan during the month of April 2016 when he first joined our office as an AUSA in this office's Criminal Division. Jonathan immediately impressed me as he carried himself with the greatest degree of humility combined with an extraordinary level of confidence. Jonathan carried those typically opposite traits with ease.

Immediately upon his arrival to the Columbus metropolitan area, Jonathan eagerly sought out ways to mentor young attorneys and to provide guidance to those youth most at need within our inner city. Jonathan's professional background, his passion for public service and his selfless dedication to the needs of others make him a quite suitable candidate for the bench.

I had the pleasure of trying two cases to verdict with Jonathan. During those trials it was clear that Jonathan paid meticulous attention to detail while zealously representing the United States with fairness and dignity. While I have tried many cases to verdict for well over 30 years, I learned a great deal from Jonathan over the course of those two trials.

Jonathan combines an enthusiasm for learning with an unassuming confidence. His writing skills are second to none. It is abundantly clear that his academic background and his clerkships at the District Court and at the Sixth Circuit have served him well, and he will continue to benefit from those skills while serving on the bench.

During my legal career, I have observed countless lawyers, civilian and military, in the performance of their duties. Based on my personal observations, Jonathan is one of the finest lawyers that I have had the pleasure to know and to work with. He is a consummate gentleman, kind and sociable, and very able to work along with other decision-makers. His respectful and pleasant demeanor will contribute to a perfect level of temperament sought for all judges.

In summation, I have the highest regard for Jonathan. His reputation for candor and professionalism is beyond reproach. Since Jonathan is a top-notch candidate for the federal bench, I unhesitatingly recommend him for the strongest possible consideration.

Very respectfully,

Salvador A. Dominguez
First Assistant United States Attorney
Captain, JAGC, USN (Ret.)

November 28, 2022

The Honorable Richard J. Durbin, Chairman
Committee on the Judiciary United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

Please accept this correspondence in support of Mr. Jonathan Grey's nomination to serve as District Court Judge for the United States District Court for the Eastern District of Michigan.

I write this letter in my capacity as the Assistant Special Agent in Charge of the United States Drug Enforcement Administration (DEA), Cincinnati District Office, Detroit Field Division. I have served as a law enforcement official for approximately 24 years. My DEA assignments have included San Diego, California; Peshawar, Pakistan; New Delhi, India; Detroit, Michigan, Washington DC, and currently Cincinnati, Ohio. During my 23 years of experience in law enforcement, I have had the opportunity to interact with hundreds of lawyers, and I have appeared in numerous state and federal courts across the United States.

With this background in mind, I strongly support Mr. Grey's appointment as a District Court Judge for the United States District Court for the Eastern District of Michigan. While I was assigned to the DEA Detroit Field Division, my enforcement group had the opportunity to investigate a significant drug trafficking organization (DTO) based in the Detroit metro area. This DTO was responsible for producing several thousand fraudulent prescriptions of oxycodone. At the time, Mr. Grey was employed as an Assistant United States Attorney in the Eastern District of Michigan. Mr. Grey was the lead prosecutor in the multi-jurisdictional investigation from 2012-2016 and was responsible for securing convictions for several individuals, which included several licensed medical doctors. This investigation was successful because of Mr. Grey's efforts.

Mr. Grey has demonstrated his extraordinary ability to focus on the details, and his reputation for fairness is at the highest level. He is a true professional and would uphold the rule of law as evidenced by my aforementioned example.

In conclusion, I have no hesitation in offering my full support for Mr. Grey's candidacy. In my opinion, he will be an excellent District Court Judge and will be fair to all of those appearing in front of him.

Please do not hesitate to contact me with any questions.

Sincerely,

Jason R. Schumacher
Assistant Special Agent in Charge
Drug Enforcement Administration

MICHIGAN LAW
UNIVERSITY OF MICHIGAN

Barbara L. McQuade
Professor from Practice

November 22, 2022

The Honorable Richard J. Durbin, Chairman
Committee on the Judiciary United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Judge Jonathan J.C. Grey

Dear Senators:

I am writing in support of the nomination of Magistrate Judge Jonathan J.C. Grey to the U.S. District Court for the Eastern District of Michigan. I believe Judge Grey to be exceptionally well qualified to serve as a district court judge.

I have known Judge Grey as a professional colleague since he joined the U.S. Attorney's Office in Detroit ten years ago. As U.S. Attorney, I had the pleasure of hiring Judge Grey in 2012 to serve as an assistant U.S. attorney. In that role, Judge Grey developed experience handling both civil and criminal cases. I was able to observe Judge Grey's professional competence, integrity, and temperament, all of which were and continue to be outstanding. He looked at problems from the perspective of all relevant stakeholders to make considered decisions. Judge Grey took seriously the responsibility of serving the public, and he was always fair and courteous to everyone he encountered in the court system.

Since taking the bench as a magistrate judge, Judge Grey has earned a reputation as a capable judge. His knowledge of the law, analytical legal skills, work ethic, and even-keeled demeanor on the bench demonstrate that he is well-qualified to serve on the district court.

I have invited Judge Grey to speak to students in my classes at the University of Michigan Law School because I know him to be a thoughtful jurist who values the opportunity to give back to the community. He has shared wisdom with our students about the importance of adhering to legal ethics in their work, and they have received his presentations with great enthusiasm.

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bmcquade@umich.edu

For all of these reasons, I believe that Judge Grey is exceptionally well qualified to serve as a district judge. Please let me know if I can provide any additional information.

Sincerely,

Barbara L. McQuade

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November 22, 2022

The Honorable Richard J. Durbin, Chairman
Committee on the Judiciary United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re; Nomination of U.S. Magistrate Judge Jonathan J.C. Grey for U.S. District Court Judge for the Eastern District of Michigan

Dear Chairman Durbin and Ranking Member Grassley:

My name is David M. DeVillers. I am a partner with the law firm of Barnes & Thornburg. I was previously the United States Attorney for the Southern District of Ohio from 2019-2021, appointed by former President Donald J. Trump, and an Assistant United States Attorney in the same district from 2002-2019. I write to you today to express my strong support of the nomination of U.S. Magistrate Judge Jonathan J.C. Grey for U.S. District Court Judge for the Eastern District of Michigan.

Over his years of service, Magistrate Judge Grey has truly done it all. He has investigated and prosecuted white collar crime, child exploitation, violent crime, and major drug trafficking organizations. I had the pleasure of working with then Jonathon from 2016-2021, first in my capacity as an AUSA and then as the United States Attorney. In particular, as an AUSA, I cocounseled an international cartel operating in numerous countries in this hemisphere with Jonathan. Throughout the district, his skill and experience well known by line AUSAs and management alike. His work ethic and intellect was admired by all.

As United States Attorney I sought out advice from Jonathan on numerous occasions and I have always been impressed by his work ethic, intellect, and principles. He clearly cared deeply about the work he was doing and how his actions impacted the lives of both victims and defendants. I have never seen him lose his temper, and he has always shown respect for others.

In short, Magistrate Judge Grey is one of the finest AUSAs I have ever encountered. I also know that he is respected by both the judiciary and defense bar. There is no doubt that he would make excellent District Court Judge. Please feel free to contact me if you have any questions.

Yours Truly,

David M. DeVillers
Special Prosecutor

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
Hon. Ann Claire Williams (Ret.)
Jones Day
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acwilliams@jonesday.com

November 7, 2022

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Julia E. Kobick to the United States District Court for the District of Massachusetts

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Julia E. Kobick, who has been nominated by the President to the United States District Court for the District of Massachusetts. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. A substantial majority of the Standing Committee determined that Ms. Kobick is **"Well Qualified,"** and a minority is of the opinion that she is **"Qualified"** to serve on the United States District Court for the District of Massachusetts. One member of the Standing Committee recused herself from voting due to a conflict. The majority rating represents the Standing Committee's official rating.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Julia E. Kobick (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

November 28, 2022

The Honorable Richard J. Durbin
Chair, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Re: Support for the Nomination of Julia Kobick to the District of Massachusetts

Dear Chairman Durbin and Ranking Member Grassley:

We, the undersigned 119 lawyers and legal scholars from Massachusetts,[1] write to the Senate Judiciary Committee in support of Julia Kobick's nomination to serve as a federal judge in the District of Massachusetts. The undersigned group has extensive experience representing clients both in the public and private sectors, handling civil and criminal matters, and working on a range of topics from civil and workers rights to education, health care, and commercial matters.

Ms. Kobick is a brilliant and skilled advocate who has spent her entire career in service to the public. Over the past nine years, Ms. Kobick has worked for the people of Massachusetts as an assistant attorney general. Her range of experience and commitment to justice make her an exemplary nominee for the federal bench.

Ms. Kobick clearly has demonstrated the facility with the law, temperament, and judgment needed to be an effective administrator of justice. She has worked on a wide range of cases in the Massachusetts Attorney General's Office covering administrative, statutory, and constitutional

[1] Each signatory to this letter joins in their personal capacity. Any titles and organizational affiliations listed below are for identification purposes only and do not reflect any broader endorsement beyond the named individuals.

issues. In all of those matters, Ms. Kobick has conducted herself beyond reproach and earned the respect of her colleagues as well as opposing counsel.

Throughout her career, Ms. Kobick has demonstrated a fundamental commitment to the rule of law. Her role as an advocate often has involved defending statutes and administrative action against challenges brought by groups or individuals. In that capacity, Ms. Kobick has been required to balance the interests of the agency clients she represents, the independence and authority of the Attorney General for whom she works, and the public interest she serves. Her ability to do so with such grace and skill makes her exceptionally qualified to be a federal judge.

In addition, Ms. Kobick is very well prepared to handle the responsibilities of a federal judgeship. Given Ms. Kobick's extensive experience as a clerk at all three levels of the federal judiciary she understands deeply how federal courts operate. The lessons learned from three highly respected jurists equip her with the perspective needed to be a fair and impartial arbiter of the law.

In conclusion, Ms. Kobick has the temperament, humility, and intellect to serve ably as a federal judge. She is superbly qualified for this position, and will be an excellent guardian of the U.S. Constitution and its command of equal justice for all. We urge the Senate to confirm her nomination to serve as a judge in the District of Massachusetts.

Sincerely,

Jonathan B. Miller
Chief Program Officer, Public Rights Project

Michael Firestone
Chief of Policy and Strategic Planning, City of Boston

Courtney Aladro
Division Chief, Massachusetts Attorney General's Office

David Aptaker
Counselor at Law

Janelle Austin
Attorney, KP Law, PC

Robert Barber
Partner, Prince Lobel Tye LLP

Thomas Barnico
Visiting Professor, Boston College Law School

Andrew Batchelor

Mary Beckman
Bureau Chief, Massachusetts Attorney General's Office

Carrie Benedon
Director, Massachusetts Attorney General's Office

Shane Blundell
Assistant Attorney General, Massachusetts Attorney General's Office

Thomas Bocian

Cassandra Bolanos
Assistant Attorney General, Massachusetts Attorney General's Office

Paul Brennan III
Committee Legal Counsel, Massachusetts House of Representatives

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Partner, Foley Hoag LLP

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Assistant Attorney General, Massachusetts Attorney General's Office

Sara Cable
Senior Privacy Attorney, Northeastern University

A. Hether Cahill
Partner, Burns & Levinson

Elizabeth Carnes Flynn
Assistant Attorney General, Massachusetts Attorney General's Office

R. Michael Cassidy
Professor, Boston College Law School

David Cavell

Adam Cederbaum
Corporation Counsel, City of Boston

Jeffrey Collins
Counsel, Morgan Brown & Joy, LLP

Kate Cook
First Assistant Attorney General, Massachusetts Attorney General's Office

Megan Corrigan
Associate, McDermott Will & Emery

John Corrigan
Attorney, Corrigan & Associates

Christophe Courchesne
Assistant Professor, Vermont Law and Graduate School

Miranda Cover
Assistant Attorney General, Massachusetts Attorney General's Office

Pierce Cray
Senior Appellate Counsel, Massachusetts Attorney General's Office

Andrew Danford
Partner, WilmerHale

Bessie Dewar
State Solicitor, Massachusetts Attorney General's Office

Lawrence DiCara

Sam Dinning
Assistant Attorney General, Maryland Attorney General's Office

Angélica Durón
Assistant Attorney General, Massachusetts Attorney General's Office

Kathleen Engel
Professor, Suffolk University

Abby Eshghi
Attorney, Arvay Finlay LLP

Abigail Fee
Assistant Attorney General, Massachusetts Attorney General's Office

Gillian Feiner
Senior Enforcement Counsel, Massachusetts Attorney General's Office

Christine Fimognari
Assistant Attorney General, Massachusetts Attorney General's Office

Simon Fischer
Associate, Greene LLP

Samantha Fuchs
Assistant Corporation Counsel, City of Boston

Matthew Gendron
General Counsel, Rhode Island Department of Business Regulation

Mary Beth Gentleman
Retired Partner, Foley Hoag LLP

Grace Gohlke
Assistant Attorney General, Massachusetts Attorney General's Office

Eric Gold
Assistant Attorney General, Massachusetts Attorney General's Office

Jennifer Greaney
Assistant Attorney General, Massachusetts Attorney General's Office

Julie Green
Assistant Attorney General, Massachusetts Attorney General's Office

Elizabeth Gwin
Attorney, Massachusetts Law Reform Institute

Andrew Haile
Assistant Teaching Professor, Northeastern University School of Law

Amanda Hainsworth
Managing Attorney, Massachusetts Attorney General's Office

Patrick Hanley
Partner, Butters Brazilian LLP

Rebecca Hart Holder
President, Reproductive Equity Now

Eric Haskell
Assistant Attorney General, Massachusetts Attorney General's Office

Jamie Hoag
Fellow, Harvard Kennedy School

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Assistant Attorney General, Massachusetts Attorney General's Office

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Chief Legal Counsel, Massachusetts Attorney General's Office

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Partner, Segal Roitman, LLP

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Meryum Khan
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Division Chief, Massachusetts Attorney General's Office

Sammy Nabulsi
Partner, Rose Law Partners LLP

Genevieve Nadeau
Counse, Protect Democracy

Jed Nosal
Partner, Womble Bond Dickinson (US) LLP

Jeffrey Pokorak
Professor of Law, Suffolk University Law School

William Porter
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Robert Quinan, Jr.
General Counsel, Massachusetts Civil Service Commission

Maryanne Reynolds
Assistant Attorney General, Massachusetts Attorney General's Office

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Dustin Saldarriaga
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Seth Schofield
Senior Appellate Counsel, Massachusetts Attorney General's Office

Jennifer Scully
Associate, Fisher & Phillips LLP

Alexa Shabecoff
Director, CONNECT The Neighborhood Developers

Yael Shavit
Assistant Attorney General, Massachusetts Attorney General's Office

Turner Smith

Amy Spector
Deputy Chief, Massachusetts Attorney General's Office

Emily Spieler
Professor of Law and Dean Emerita, Northeastern University

Erin Staab
Assistant Attorney General, Massachusetts Attorney General's Office

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Stephen Vogel
Senior Compliance Director, Alexion Pharmaceuticals

Kimberly West
Partner, Ashcroft Law Firm

Heather Yountz
Senior Immigration Staff Attorney, Massachusetts Law Reform Institute

George Zachos
Executive Director, Commonwealth of Massachusetts

David Zimmer
Partner, Goodwin

THE COMMONWEALTH OF MASSACHUSETTS
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MAURA HEALEY
ATTORNEY GENERAL

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November 22, 2022

The Honorable Richard J. Durbin, Chair
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 Building
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Grassley,

As the current and former Attorneys General of Massachusetts, we write in support of Julia Kobick's nomination to serve as District Judge on the United States District Court for the District of Massachusetts.

We know Julie will serve the District of Massachusetts with distinction because of her deep experience in the federal courts, her longstanding commitment to public service, and her extraordinary intellect. She will also bring to the bench the kind of even-keeled, steady temperament so important to a trial court judge, as well as the utmost integrity.

The Massachusetts Attorney General's Office has been fortunate to have the benefit of Julie's work on many of the Office's most challenging matters in both state and federal courts from 2013 to the present. Demonstrating her commitment to public service, Julie came to the Office's Administrative Law Division—now known as the Constitutional and Administrative Law Division—directly from her clerkship for Justice Ruth Bader Ginsburg. She had previously clerked both on the United States Court of Appeals for the Third Circuit for Judge Michael Chagares, as well as in the District of Massachusetts itself for Judge Dennis Saylor.

As we know from our own tenures in the Office, the work of the Attorney General's Office—and particularly the Constitutional and Administrative Law Division—is constantly demanding. To advance the public interest in representing the Commonwealth and its agencies in both state and federal courts from the trial court level all the way through appeals, an Assistant

Attorney General must possess tireless dedication, keen analytical skills, superb writing skills, and sound judgment. Exemplifying all of these attributes, Julie won the Office's Attorney General Elliot L. Richardson Award for Excellence in 2019.

Experienced Assistant Attorneys General like Julie are also called upon to provide supervision and mentorship to more junior attorneys, as Julie now does for attorneys across the office in her role in the Office of the State Solicitor. We are also familiar with Julie's commitment to advancing the profession and mentoring others—as well as with her dazzling intellect and thoughtful, judicious temperament—from other work she has done, including at Boston College Law School's Rappaport Center for Law and Public Policy. Julie was a Rappaport fellow in 2008 and, since 2015, has served on the Center's Board of Directors and as a valued mentor to current fellows.

We respectfully ask the Judiciary Committee to favorably advance Julie's nomination, and for the Senate to confirm her as District Judge on the United States District Court for the District of Massachusetts.

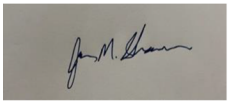
Very truly yours,

Maura Healey
Massachusetts Attorney General

Martha Coakley
Massachusetts Attorney General, 2007-2015

Thomas Reilly
Massachusetts Attorney General, 1999-2007

Scott Harshbarger
Massachusetts Attorney General, 1991-1999



James M. Shannon
Massachusetts Attorney General, 1987-1991

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

November 22, 2022

The Honorable Richard J. Durbin, Chair
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 Building
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Grassley:

We write in support of Julia Kobick's nomination to serve as District Judge on the United States District Court for the District of Massachusetts.

The undersigned have all served as senior legal counsel within the executive department of the Commonwealth of Massachusetts during Governor Charlie Baker's term of office from 2015 to 2022. In that capacity, we have all worked in partnership with the Massachusetts Attorney General's Office to respond to major litigation affecting the Commonwealth. A number of us also previously served alongside Julie Kobick in the Massachusetts Attorney General's Office. We have all come to learn that when Julie takes on an important case, the Commonwealth will receive the most effective legal representation possible, the litigation will be conducted according to the highest possible professional and ethical standards, and we ourselves will learn something valuable about the law—quite possibly along with the court and the other parties. We are confident that Julie will make an excellent federal judge.

Julie is a brilliant lawyer, a first-class writer, and a dedicated public servant. With all of these strengths as an advocate, Julie is regularly assigned many of the most important and complex cases to come before the Attorney General's Office. To each of these matters, Julie brings the special kind of legal brilliance that simplifies rather than complicates difficult legal

questions. Her arguments are advocacy but also provide a clear roadmap and resource for the court to decide the case, with the result that she has been uncommonly successful in her work.

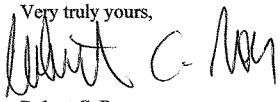
Julie has excellent judgment and operates with a strong and palpable sense of her larger responsibilities as a lawyer and a public servant. Accordingly, in formulating a legal strategy and providing advice to her client, Julie always considers more than just the stakes of the immediate case. She is exceptionally sensitive to the longer-term implications of the available legal arguments in any case, particularly given the Commonwealth's special position as a litigant. Put more simply, as a government lawyer and as a professional dedicated to justice through the law, Julie always grounds her advocacy and advice in a keen concern for advancing and defending the public good.

We know, based on long experience with her as clients, colleagues, and fellow lawyers, that Julie Kobick has the disposition, confidence, and experience necessary to handle both the legal decision-making and the human interactions that are part of the workload of a District Court judge. Many cases challenging government practices are effectively decided at the preliminary injunction stage, which requires quick analysis, fast brief writing, and clear and effective argument at the hearing, all on an expedited time frame. Julie's ability to operate successfully in these time-sensitive, highly contentious proceedings gives strong evidence of her ability to manage the work of a busy District Court.

Julie remains serene and measured even under considerable pressure. She is also a great listener. She is responsive, kind, and engaging in discussion and debate. Julie is consistently respectful to opposing counsel and to the court, and with all of her advantages, she conducts herself with the measure of respect and empathy for others that is itself a critical component to administering justice.

We encourage the Senate to quickly confirm Julie Kobick to the District Court.

Very truly yours,



Robert C. Ross
Chief Legal Counsel to Governor Baker
and former Assistant Attorney General

On my Own Behalf and On Behalf of:

Michael A. Kaneb
Deputy Chief Legal Counsel to Governor Baker

Kirk G. Hanson
Deputy Legal Counsel to Governor Baker
and former Assistant Attorney General

John M. Stephan
General Counsel for the Executive Office of Administration and Finance
and former Assistant Attorney General

Sharon Boyle
General Counsel for the Executive Office of Health and Human Services

Margret R. Cooke
Commissioner of the Department of Public Health
and former Assistant Attorney General

Susan M. Terrey
Deputy Secretary for the Executive Office of Public Safety and Security

Suleyken Walker
General Counsel for the Executive Office of Public Safety and Security
and former Assistant Attorney General

Tori T. Kim
Assistant Secretary for the Executive Office of Energy and Environmental Affairs
and former Assistant Attorney General

Benjamin Goldberger
General Counsel for the Executive Office of Energy and Environmental Affairs

November 23, 2022

The Honorable Richard J. Durbin, Chair
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 Building
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Grassley,

We write in strong support of Julia Kobick's nomination to serve as District Judge on the United States District Court for the District of Massachusetts.

Each of us served with Julie as a law clerk at the United States Supreme Court during the October Term 2012, when Julie clerked for the late Justice Ruth Bader Ginsburg. We hold a diverse range of political and jurisprudential views. We currently serve in positions spanning public service, private practice, business, and academia. But, with respect to Julie, we are unified in our belief that Julie has the intellect, temperament, judgment, and experience to serve with distinction as a United States District Court judge.

We know from firsthand experience that Julie has the intellect, temperament, and judgment to excel as a District Judge. During our Supreme Court Term, we worked with Julie on some of the most important and contentious issues of the day. Indeed, over the last 15 years, no Term has seen a higher rate of 5-4 decisions than ours. Through it all, Julie remained an exceptional colleague, assessing cases dispassionately and working collaboratively across chambers and the ideological spectrum. Her keen intellect and grasp of the law were always evident, but so too were her humility and open-mindedness. She listened intently to others and carefully considered their views, even when she ultimately disagreed with their positions. To put it simply, Julie was the rare colleague whose intellectual firepower was matched by her exceptional warmth, kindness, and generosity. We have no doubt that Julie will take the same attitude and approach to the bench, affording all parties appearing before her a fair hearing, and treating them with kindness and respect.

Since our time as co-clerks, Julie has distinguished herself as an exceptional and respected public servant and advocate. Julie's dedication to public service is especially noteworthy. Julie has spent her entire post-clerkship career with the Massachusetts Attorney General's Office. There, she has served as an Assistant Attorney General and Deputy State Solicitor, litigating a wide range of cases in both federal and state courts. Julie's intelligence, kindness, and dedication to

her work have earned her enormous respect within that Office, as well as with lawyers with whom she has interacted throughout the Massachusetts legal community.

For all of these reasons, we applaud Julie's nomination, and we hope the Senate will promptly confirm her.

Sincerely,

Kwaku A. Akowuah
Law Clerk to Justice Breyer (OT 2012)

Samantha Bateman
Law Clerk to Justice Kagan (OT 2012)

Eduardo F. Bruera
Law Clerk to Justice Stevens (OT 2012)

Brian Burgess
Law Clerk to Justice Sotomayor (OT 2012)

Martine Cicconi
Law Clerk to Justice Ginsburg (OT 2012)

Eric F. Citron
Law Clerk to Justice O'Connor (OT 2012)

Robert Dunn
Law Clerk to Justice Thomas (OT 2012)

Jonathan Y. Ellis
Law Clerk to Chief Justice Roberts (OT 2012)

Janet Galeria
Law Clerk to Justice Thomas (OT 2012)

E. Rebecca Gantt
Law Clerk to Justice Breyer (OT 2012)

Joshua A. Geltzer
Law Clerk to Justice Breyer (OT 2012)

Brian P. Goldman
Law Clerk to Justice Sotomayor (OT 2012)

Scott Grinsell
Law Clerk to Justice Sotomayor (OT 2012)

Joshua S. Johnson
Law Clerk to Justice Ginsburg (OT 2012)

Emily J. Kennedy
Law Clerk to Justice Alito (OT 2012)

Sina Kian
Law Clerk to Chief Justice Roberts (OT 2012)

Adam Klein
Law Clerk to Justice Scalia (OT 2012)

Caroline Edsall Littleton
Law Clerk to Chief Justice Roberts (OT 2012)

Josh Patashnik
Law Clerk to Justice Kennedy (OT 2012)

Thane Rehn
Law Clerk to Justice Ginsburg (OT 2012)

Ian Samuel
Law Clerk to Justice Scalia (OT 2012)

Danielle R. Sassoon
Law Clerk to Justice Scalia (OT 2012)

Zachary C. Schauf
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Benjamin W. Snyder
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Mark D. Taticchi
Law Clerk to Justice Kennedy (OT 2012)

Charlotte H. Taylor
Law Clerk to Justice Sotomayor (OT 2012)

Eric Tung
Law Clerk to Justice Scalia (OT 2012)

Anthony Vitarelli
Law Clerk to Justice Souter (OT 2012)

Ryan J. Watson
Law Clerk to Justice Alito (OT 2012)

Susannah Landes Weaver
Law Clerk to Justice Breyer (OT 2012)

Lauren Willard
Law Clerk to Justice Kennedy (OT 2012)

David Zimmer
Law Clerk to Justice Kagan (OT 2012)

The writers have signed this letter in their personal capacities and not on behalf of any current or former employer or client. Additional clerks from OT 2012 were unable to sign by virtue of their current positions.

COMMONWEALTH OF MASSACHUSETTS
THE APPEALS COURT
BOSTON, MASSACHUSETTS 02108

November 23, 2022

The Honorable Richard J. Durbin, Chair
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 Building
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Grassley:

We write to express our enthusiastic and unqualified support for Julia Kobick, who has been nominated to serve as a judge on the United States District Court for the District of Massachusetts. We are a group of current and retired members of the Massachusetts trial and appellate courts and have a diverse range of professional backgrounds: former government attorneys, federal and state prosecutors, criminal defense attorneys, large and small firm attorneys, and a law school professor and administrator. Several of us also worked with Ms. Kobick in our former roles as Assistant Attorneys General in the Massachusetts Attorney General's Office.

After completing three federal clerkships—with Judge F. Dennis Saylor IV of the United States District Court for the District of Massachusetts, Judge Michael A. Chagares of the United States Court of Appeals for the Third Circuit, and United States Supreme Court Justice Ruth Bader Ginsburg—Ms. Kobick had a wealth of opportunities available to her to begin her career. She chose to devote her entire career to public service, arriving at the Massachusetts Attorney General's Office in 2013, where she remains today. For the past decade, she has served the residents of Massachusetts with distinction, defending the legality of a wide range of state statutes, regulations, and agency actions. Many of her cases have involved highly complex and nuanced issues of constitutional law and issues concerning the interpretation and application of federal statutes.

During her career Ms. Kobick has appeared regularly in the trial courts and the appellate courts, both federal and state. She has examined witnesses and written and argued

numerous dispositive and nondispositive motions in trial court proceedings, and has written briefs and presented oral argument in numerous cases on appeal. We have had the opportunity to observe Ms. Kobick professionally and can attest that she is an exceptionally talented attorney, who has an impeccable reputation with the bench and the bar alike. She is a highly skilled writer and insightful advocate and has the ability to explain even the most complicated points of law so that they are accessible to anyone. Both her written and oral presentations are notable for their clarity and conciseness—skills that we believe are critical to be an effective judge.

In addition to her considerable legal talents, Ms. Kobick's integrity, temperament, and character traits make her well suited to be a judge. She is calm, patient, and an excellent listener. She is committed to the rule of law, as she has consistently demonstrated throughout her career. She has been involved in the community, regularly volunteering as a mentor through an organization that supports law students committed to public interest and public policy work. Based on Ms. Kobick's experience and character, we are confident that she will be a fair and impartial judge who will be courteous to all litigants appearing before her, represented and unrepresented, and who will strive to ensure that all have a full opportunity to be heard.

We take seriously a decision to support a nomination to a position as important as federal district court judge. We are unified nonetheless in our support for Ms. Kobick. She is a dedicated public servant and an attorney of the highest caliber and character. Her intellect, work ethic, integrity, and humility will make her transition from litigator to trial judge seamless. We are confident that she will uphold the independence and impartiality of the federal judiciary, and we are proud to give her our support.

We respectfully urge that the Senate Judiciary Committee vote in favor of Ms. Kobick's nomination.

Thank you for your time and consideration.

Sincerely,

Margot Botsford
Associate Justice (Ret.)
Massachusetts Supreme Judicial Court

Joseph M. Ditkoff
Associate Justice
Massachusetts Appeals Court

Gregory I. Massing
Associate Justice
Massachusetts Appeals Court

Peter W. Sacks
Associate Justice
Massachusetts Appeals Court

Sookyoung Shin
Associate Justice
Massachusetts Appeals Court

Christopher K. Barry-Smith
Associate Justice
Massachusetts Superior Court

November 22, 2022

The Honorable Richard J. Durbin, Chair
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 Building
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Grassley:

We write in support of Julia Kobick's nomination to serve as District Judge on the United States District Court for the District of Massachusetts. The undersigned attorneys have all litigated cases against parties represented by Attorney Kobick in state or federal court, while Attorney Kobick represented the Commonwealth of Massachusetts as an Assistant Attorney General. We have seen Attorney Kobick work in a variety of legal proceedings: during depositions and negotiations; at oral arguments before state and federal trial court judges; and during appellate arguments before the First Circuit Court of Appeals and the Massachusetts Supreme Judicial Court. All of the undersigned enthusiastically support her nomination and believe she would be a strong addition to the United States District Court for the District of Massachusetts.

Attorney Kobick possesses the intellect, professionalism, demeanor, and temperament to serve as United State District Court judge. Her legal abilities and intellect are first rate, as shown through the clarity and persuasiveness of her written and oral advocacy. We have witnessed her skillful representation of the Commonwealth and its official in a variety of civil rights actions and challenges to state action involving questions of constitutional law, immunity, and abstention doctrines. She is always prepared and helps the Court understand the legal issues while meticulously advocating for her clients.

In addition, and perhaps more importantly, Attorney Kobick possesses the demeanor and temperament for this important appointed position. We have witnessed her performing under pressure situations in oral arguments and in other proceedings, and she consistently represents the Commonwealth's interests with a professional and measured manner. Attorney Kobick is thoughtful and considerate. All of us enjoy working with and against her, even when our parties' interests directly clash. Throughout the cases Attorney Kobick maintains a calm presence and

diffuses any contentious situation with a professional attitude. As a result, we strongly support her nomination and urge the Senate to confirm her as the next District Court Judge for the District of Massachusetts.

David R. Kerrigan
Kenney & Sams, P.C.

/s/ Karen Owen Talley
Karen Owen Talley, Esq.
Committee for Public Counsel Services

/s/ Meredith G. Fierro
Meredith G. Fierro, Esq.
CEK Boston, P.C.

/s/ Steven Hollman
Steven Hollman, Esq.
Sheppard, Mullin, Richter & Hampton, LLP

/s/ James Manley
James Manley, Esq.
Goldwater Institute

/s/ David Jensen
David Jensen, Esq.
David Jensen, PLLC

/s/ Joel Thompson
Joel Thompson, Esq.
Prison Legal Assistance Project
Harvard Law School

/s/ William Fick
William Fick, Esq.
Fick & Marx, LLP

M. Patrick Moore, Jr.
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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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acwilliams@jonesday.com

November 4, 2022

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Judge Rita F. Lin to the United States District Court for the Northern District of California

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Rita F. Lin, who has been nominated by the President to the United States District Court for the Northern District of California. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Lin is **"Well Qualified"** to serve on the United States District Court for the Northern District of California.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Judge Rita F. Lin (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

Superior Court of California
County of San Francisco

BRUCE E. CHAN
JUDGE

November 22, 2022

The Honorable Richard Durbin, Chairman

The Honorable Charles Grassley, Ranking Member

United States Senate, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Sent via email to Phil Brest, Phillip_Brest@judiciary-dem.senate.gov and Brendan Chestnut, Brendan_Chestnut@judiciary-rep.senate.gov

Re: Letter of Support for the Confirmation of the Honorable Rita Lin

Dear Chairman Durbin and Ranking Member Grassley,

I write in support of the nomination of Judge Rita Lin to serve as a Federal District Court Judge for the Northern District of California. I have worked closely with her since her appointment to the Superior Court in 2018. As you know, Judge Lin has considerable experience in complex civil and criminal matters. Before her appointment she was defense counsel in a number of class action matters. As an assistant United States Attorney, she prosecuted public corruption, organized crime and narcotics trafficking cases.

As the judicial officer responsible for providing training to our members regarding search warrants, I asked Judge Lin to revise our policies and procedures concerning stored electronic communications, an incredibly complex and rapidly evolving area of Fourth Amendment jurisprudence. As a former federal prosecutor, she was uniquely qualified to create a curriculum and several different presentations to ensure that our judges adhered to both federal and state law guidelines. Her scholarship and writing are universally acknowledged by members of the court as superlative, striking the appropriate balance between the needs of law enforcement and respect for longstanding constitutional protections.

Judge Lin is also held in equally high regard by both the prosecution and the defense in our jurisdiction; her reputation is that of an efficient, prepared, scholarly, and impartial

Superior Court of California
County of San Francisco

BRUCE E. CHAN
JUDGE

jurist. I have heard many lawyers comment upon her calm demeanor and measured approach to contentious legal issues. She will be an asset to the District Court for many years to come. If you should have any questions, please do not hesitate to contact me. My direct line is (415) 551-4070.

Very truly yours,

Bruce E. Chan

CALIFORNIA
ASIAN PACIFIC AMERICAN
BAR ASSOCIATION

1700 Montgomery Street, Suite 207
San Francisco, CA 94111
646-342-4174 | calapaba.org
calapaba.president@gmail.com

November 26, 2022

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Charles Jung, Executive Director

The Honorable Chair Richard Durbin and
Ranking Member Charles Grassley
United States Senate
c/o Phillip_Brest@judiciary-dem.senate.gov and
Brendan_Chestnut@judiciary-rep.senate.gov

Re: Letter of Support for the Honorable Rita Lin, Judicial Nominee for the U.S. District Court for the Northern District of California

Dear Senators Durbin and Grassley:

The California Asian Pacific American Bar Association (Cal-APABA) writes to support the nomination of the Honorable Rita Lin for the United States District Court for the Northern District of California. Cal-APABA represents the interests of dozens of Asian Pacific American (APA) bar organizations in California and the approximately 14,000 APA attorneys statewide to promote justice and equality, advance legal and policy matters that impact the APA community, and enhance the professional development of its members.

Judge Lin is currently a California Superior Court Judge in San Francisco County. She presides over felony and misdemeanor criminal trials, and motions to revoke probation and post-release community supervision. Judge Lin previously presided for two years over a felony criminal calendar where she heard motions to suppress, motions to discover confidential informants and bail/release motions. She also conducted arraignments, preliminary hearings, pleas and sentencings. Judge Lin has built an excellent reputation in the legal community of being hard-working, intelligent, and an effective communicator, all while upholding the highest levels of professionalism and demeanor.

Before being appointed to the Superior Court, Judge Lin had a diverse and impressive legal career. She first clerked for the Honorable Sandra Lynch on the First Circuit Court of Appeals, then entered private practice as an associate at Morrison & Foerster and was promoted to equity partner in 2012. In 2014, Judge Lin answered the call to public service working as an Assistant U.S. Attorney in the Northern District of California where she prosecuted cases on public corruption, organized crime and narcotics, firearms and child pornography.

Judge Lin has therefore seen the law from many different perspectives—both civil and criminal and as a judge, prosecutor, defense counsel and judicial law clerk. This breadth of legal experience will serve Judge Lin well in whatever situations she will later face on the federal bench.

We have known Judge Lin for years and believe she would be an excellent federal judge. She is composed, passionate and empathetic. Judge Lin has utilized these skills as a Superior Court Judge for the past three years where she has been committed to providing everyone a fair opportunity to be heard.

Judge Lin's commitment to the Asian American and other minority communities is also extraordinary. She is an active member of the Asian American Bar Association of the Greater Bay Area and the National Asian Pacific American Bar Association since 2004 and is an active member of the California Asian Pacific American Judges Association since 2018. The organizations with which Judge Lin has been involved and the programs and initiatives she has participated in are both numerous and wide-ranging. However, they all include the undercurrent of Judge Lin's passion for promoting diversity, equal access and justice to those who need it most. Judge Lin has an exemplary track record of community service and serving on the federal bench would be a natural progression to her commitment.

Judge Lin's unique background and diverse work experience have given her a perspective and framework that will benefit all those who appear before her. We highly support Judge Lin's nomination and believe she would make a positive impact on the federal bench. We hope that you will do our community the honor of confirming her.

Should you have any additional questions, please do not hesitate to contact me at 646-342-4174 or by email at asit@panwalalaw.com.

Sincerely,

Asit Panwala
2022-23 President
California Asian Pacific American Bar Association

November 28, 2022

The Honorable Richard J. Durbin
Chair
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Judicial Nomination – Rita Lin

Dear Chair Durbin and Ranking Member Grassley:

We are former prosecutors from the U.S. Attorney's Office for the Northern District of California. We write to offer our wholehearted support for the nomination of the Honorable Rita Lin to the United States District Court for the Northern District of California.

From 2014 until her appointment to the San Francisco Superior Court bench in 2018, Judge Lin served as an Assistant United States Attorney. Each of us who have signed this letter served the United States alongside Judge Lin in various ways—as former colleagues, former co-counsel, former supervisors, and/or as friends. We have seen that Judge Lin is an accomplished and talented trial attorney who successfully prosecuted drug traffickers, violent offenders, corrupt public officials, and those who preyed on children. We state confidently and from personal knowledge that Judge Lin is highly intelligent, perceptive, collegial, and fair-minded.

What stands out as much as Judge Lin's legal skill is her commitment to civility and professionalism inside and outside the courtroom. As former federal prosecutors, we each took an oath to support and defend the Constitution of the United States, and we committed ourselves to the fair and impartial application of justice that our constitutional system is designed to provide. Judge Lin recognizes that prosecutors and defense lawyers are essential to the rule of law and the functioning of our criminal justice system and that the zealous representation of one's client – whether the United States or an individual defendant – is worthy of respect.

Collectively, we have served the United States for more than 290 years, and have handled thousands of criminal cases and hundreds of jury trials. Our aggregate experience informs our judgment that Judge Lin is highly qualified to serve as a United States District Judge. We are confident that she will represent and serve the people of the Northern District of California with distinction and humility.

We offer unequivocal endorsement of her nomination and respectfully recommend her swift confirmation.

Sincerely,

/s/ Sheila A.G. Armbrust	/s/ Chinhayi C. Cadet	/s/ William J. Edelman
/s/ Rebecca A. Falk	/s/ William Frentzen	/s/ Susan Gray
/s/ Sarah K. Hawkins	/s/ John H. Hemann	/s/ Andrew S. Huang
/s/ Scott D. Joiner	/s/ Daniel Kaleba	/s/ Philip J. Kearney
/s/ Karen Kreuzkamp	/s/ W.S. Wilson Leung	/s/ Brian C. Lewis
/s/ Michael Maffei	/s/ Brigid S. Martin	/s/ Meredith Osborn
/s/ Jeffrey Shih	/s/ Brian J. Stretch	/s/ Anne M. Voigts
/s/ J. Douglas Wilson	/s/ Marc Price Wolf	

Superior Court of California
County of San Francisco

CHRISTINE VAN AKEN
JUDGE

November 28, 2022

The Honorable Dick J. Durbin
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Letter of Support for the Honorable Rita F. Lin,
Nominee for the United States District Court
for the Northern District of California

Dear Chairman Durbin and Ranking Member Grassley:

We are judges of the San Francisco Superior Court and colleagues of Judge Rita F. Lin. We write in wholehearted support of her nomination to serve as a federal judge of the United States District Court for the Northern District of California.

Judge Lin's skills, temperament, and character will enable her to become a model district judge. With regard to her skills, she has a remarkable facility for legal analysis and reasoning and has become someone that many of us turn to for discussions of the challenging or novel legal questions that arise in our courtrooms every day. Her mind is both quick and pragmatic; she always has an eye for the practical impacts of her decisionmaking, but she is also well versed in the statutes and precedents that govern our work. Where she does not know an area of law, she does not hesitate to research issues personally, and she does the work to be certain of her answers before issuing her rulings. She is known to be hardworking, diligent, and rigorous in her thinking.

With regard to Judge Lin's temperament and character, we know her to be fair-minded and free from bias. Judges are expected to rule based on the facts and law before them without fear or favor to any party. Judge Lin takes this obligation to heart and is

committed to fairness to the parties who appear before her; she listens to all parties' positions and considers her rulings carefully before issuing them. She is also known to be measured and to treat everyone in her courtroom with courtesy and dignity.

Judge Lin has also become a leader on our court in developing new solutions to the everyday challenges of administering justice. There are many examples of her leadership: she drafted materials to assist judges in performing warrant duty; she initiated a criminal trial judges' roundtable series for judges to share knowledge about trial management; she took the lead in working with San Francisco's criminal justice partners to develop better information about our electronic monitoring practices to help judges make sound release decisions. These examples—and they are but a few examples—illustrate that Judge Lin is a hardworking colleague who has committed herself to her duties, and we have no doubt that she will bring similar leadership, initiative, and diligence to her duties as a district judge.

In short, we believe that Judge Lin will be an exemplary district judge and we strongly commend her to you. Thank you for considering our views on her nomination.

Sincerely,

Hon. Christine Van Aken
Judge, Superior Court of California
County of San Francisco

Hon. Michael Begert
Judge, Superior Court of California
County of San Francisco

Hon. Teresa M. Caffese
Judge, Superior Court of California
County of San Francisco

Hon. Roger C. Chan
Judge, Superior Court of California
County of San Francisco

Hon. Andrew Y. S. Cheng
Judge, Superior Court of California
County of San Francisco

Hon. A. Marisa Chun
Judge, Superior Court of California
County of San Francisco

Hon. Linda Colfax
Judge, Superior Court of California
County of San Francisco

Hon. Brendan Conroy
Judge, Superior Court of California
County of San Francisco

Hon. Charles Crompton
Judge, Superior Court of California
County of San Francisco

Hon. Richard C. Darwin
Judge, Superior Court of California
County of San Francisco

Hon. Harry M. Dorfman
Judge, Superior Court of California
County of San Francisco

Hon. Brian L. Ferrall
Judge, Superior Court of California
County of San Francisco

Hon. Loretta M. Giorgi
Judge, Superior Court of California
County of San Francisco

Hon. Carolyn Gold
Judge, Superior Court of California
County of San Francisco

Hon. Alexandra Robert Gordon
Judge, Superior Court of California
County of San Francisco

Hon. Christopher C. Hite
Judge, Superior Court of California
County of San Francisco

Hon. Curtis E. A. Karnow
Judge, Superior Court of California
County of San Francisco

Hon. Kathleen Kelly
Judge, Superior Court of California
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Hon. Michael McNaughton
Judge, Superior Court of California
County of San Francisco

Hon. Ross C. Moody
Judge, Superior Court of California
County of San Francisco

Hon. Vedica Puri
Judge, Superior Court of California
County of San Francisco

PRESIDENT
RAKIM BROOKS

CHAIR
PAULETTE MEYER

November 30, 2022

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing over 150 public interest and civil rights organizations, I write to support the confirmation of Judge Rita Lin to the United States District Court for the Northern District of California.

Born in Oakland, California, Judge Lin graduated *magna cum laude* from Harvard University in 2000 and Harvard Law School in 2003. Justice Lin has experience in both public service and private practice, making her a well-rounded candidate for the federal bench. After law school, Judge Lin served as a law clerk for Judge Sandra Lynch of the United States Court of Appeals for the First Circuit in Boston. In 2004, she moved back to California, working as a litigation associate in the San Francisco office of the law firm Morrison & Foerster LLP.

During her tenure at Morrison & Foerster LLP, she gained vast experience in complex civil litigation, eventually becoming a partner at the law firm and managing teams of attorneys across multiple offices nationwide. She also engaged in significant pro bono work while in private practice, including working on landmark litigation to overturn the Defense of Marriage Act—demonstrating her commitment to equality under the law. Judge Lin has a significant public service record and ties to the Northern District of California, where she served as a federal prosecutor from 2014-2018, investigating complex criminal conspiracies, including developing a program for investigating doctors and other medical professionals for illegally proscribing opioids.

In addition to her experience in litigation, Judge Lin's judicial experience makes her an ideal choice for the federal bench. In 2018, she was appointed by California Governor Jerry Brown to serve as a judge in the San Francisco County Superior Court. She has presided over hundreds of felony criminal cases, grappling with complex questions of evidence and due process. While on the bench, she has also sought to improve the administration of criminal justice, serving on the Superior Court's Executive Committee, Bail Review & Pretrial Detention Committee, and Adult Probation Oversight Committee.

Judge Lin's extraordinary skills in the courtroom gained her recognition in the field. She was chosen as one of the National Asian Pacific American Bar Association's "Best Lawyers Under 40" in 2017 as well as chosen by the Daily Journal's "Top 100 Women Attorneys in California" in 2012. Further, she has been recognized for her significant pro bono work, earning her the Bay Area Lawyers for Individual Freedom's Legal Service Award in 2012.

Not only is Judge Lin qualified for her appointment to the Northern District of California – she would make history on that bench. If confirmed, Judge Lin would be the second Asian American woman, and first ever Taiwanese American woman, to sit on the Northern District of California. It is critical that our courts reflect the breadth of the communities they serve, and the confirmation of Judge Lin would be a step closer to equitable representation of Asian Americans on our federal courts.

Additionally, during her Senate Judiciary Committee Hearing, Judge Lin disclosed that she has a hearing disability. An estimated one in four adults in the United States — 61 million people — has a disability. Despite the prevalence of disabilities throughout American society, only a handful of judges currently sitting on the federal bench identify as persons with disabilities, and Judge Lin is one of the first of Biden's nominees to do so. She clearly understands the importance of a fair playing field and is dedicated to ensuring the legal system works for all people.

Judge Lin is a fair-minded judge who understands the importance of the rule of law in the pursuit of justice. Her experiences in public service, as a private litigator, and as a judge make her aptly prepared to serve in this role. For these reasons, I urge you to expeditiously confirm Judge Rita Lin to the United States District Court for the Northern District of California.

Sincerely,

Rakim H.D. Brooks

Rakim Brooks
President, Alliance for Justice

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

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November 4, 2022

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Magistrate Judge Ramon Ernesto Reyes, Jr. to the United States District Court for the Eastern District of New York

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Ramon Ernesto Reyes, Jr., who has been nominated by the President to the United States District Court for the Eastern District of New York. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Magistrate Judge Reyes is **"Well Qualified"** to serve on the United States District Court for the Eastern District of New York.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee
on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Magistrate Judge Ramon Ernesto Reyes, Jr. (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

December 5, 2022

The Honorable Richard J. Durbin
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Ramon E. Reyes, Jr. to the United States District Court for the Eastern District of New York

Dear Chairman Durbin and Ranking Member Grassley:

We are the former law clerks for Ramon E. Reyes, Jr., U.S. Magistrate Judge for the U.S. District Court for the Eastern District of New York in Brooklyn. We write to enthusiastically support his confirmation as a judge for the U.S. District Court for the Eastern District of New York.

We offer our unique perspective of having worked with Judge Reyes in his capacity as a federal magistrate judge. Some of us have also had the privilege of being his students at Brooklyn Law School. All of us have learned from him as a fellow human. Judge Reyes' personal and professional background, commitment to justice, high intellect, and exceptional work ethic make him an outstanding choice as a United States District Judge.

Judge Reyes has stellar professional qualifications. His exemplary career began at the New York City Council as a legislative attorney. After clerking for the Honorable David Trager at the U.S. District Court for the Eastern District of New York, he practiced litigation at O'Melveny & Myers LLP before joining the U.S. Attorney's Office for the Southern District of New York. After eight years of service as an Assistant U.S. Attorney—and his leadership as a Deputy Chief of Civil Appeals—Judge Reyes began his current position as U.S. Magistrate Judge for the U.S. District Court for the Eastern District of New York, where he serves today. We saw how litigants and colleagues benefited from his broad professional experience. Judge Reyes' reputation as a fair and decisive jurist is well deserved.

Judge Reyes' distinguished career is only one part of what makes him qualified to serve as a District Judge for the U.S. District Court for the Eastern District of New York. He is an outstanding jurist. We each witnessed firsthand Judge Reyes' sharp intellect, analytical skills, and resolute commitment to impartially applying the law. Judge Reyes meticulously prepares for

each hearing before he takes the bench. Before hearing any argument on an issue, Judge Reyes works tirelessly to understand both the particular facts of the case before him and the nuances of the law that apply to each issue on which he will render a decision. He approaches each case with an open mind, listens intently to the evidence and argument presented by each side, and faithfully applies the applicable rules, statutes, and precedent. Judge Reyes works tirelessly to resolve matters before him, regardless of what that answer may be or the number of drafts needed to reach it. He is committed to equity and justice. His meticulously written and well-reasoned opinions reflect his steady and careful approach to every case.

Upon consent of the parties, Judge Reyes has presided over many bench trials and jury trials. The number of bench trials opted for by the parties is a testament to his fairness, consistency, impartiality, and skill as a jurist.

Judge Reyes taught us to be open-minded, rigorous, and practical as new lawyers. We watched him earn the trust of individuals in his courtroom, particularly when litigants were involved in sensitive or difficult matters. We also saw Judge Reyes earn the respect of his courthouse colleagues, from facilities personnel to senior judges. Judge Reyes' mentorship was critical to shaping each of us. We now have leadership roles—across all areas of legal practice and in our personal lives—and we are lucky to have had a role model and friend in Judge Reyes.

It is important to note that Judge Reyes will bring critical diversity to the federal judiciary. If confirmed, Judge Reyes would be only the second Hispanic man to serve on the U.S. District Court for the Eastern District of New York. Judge Reyes' confirmation will contribute to a judiciary that looks more like the public it serves. His confirmation will strengthen the institutional legitimacy of the federal judiciary.

We have had unparalleled access to Judge Reyes' judicial decision-making process and have come to know him off the bench as well. We support his nomination without hesitation. We can attest that his integrity, talent, and fairness will make him an asset to the U.S. District Court for the Eastern District of New York.

Sincerely,

Alexis N. Stevens, Esq.

Previn A. Waran, Esq.

Kara A. Naseef, Esq.

Lara R. Corchado, Esq.

Kevin Levine, Esq.

Victoria M. Lee, Esq.

Heather M. Martone-Santos, Esq.

Adrienne M. Yasunaga, Esq.

Emmanuel Fashakin, Jr., Esq.

Krista A. Gay, Esq.

Elise R. Meyer, Esq.

Jacqueline Genovese Bova, Esq.

Melisa Elif Gerecci Meyler, Esq.

Aaron Warshaw, Esq.

Anna Nellums, Esq.

Adam Rodriguez, Esq.

Luis Morales, Esq.

Myra F. Din, Esq.

McCahey Townsend, Esq.

Ardis Strong, Esq.

Kayla Harrington, Esq.

Emily Smit, Esq.

PRESIDENT
RAKIM BROOKS

CHAIR
PAULETTE MEYER

November 30, 2022

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing over 150 public interest and civil rights organizations, I write to strongly support the confirmation of Judge Ramon Reyes to the United States District Court for the Eastern District of New York.

Judge Ramon Reyes, a graduate of Cornell University, Brooklyn Law School, and New York University School of Law, is highly qualified to sit on the Eastern District of New York's bench. After law school and earning his L.L.M, he began his legal career as a legislative attorney for the New York City Council before clerking for Hon. David Trager on the United States District Court for the Eastern District of New York. An experienced litigator in both the private and public sectors, he served as a litigation associate at O'Melveny & Meyers LLP in New York City and as an Assistant United States Attorney in the U.S. Attorney's Office in the Southern District of New York. This experience serving in complex commercial litigation and as a prosecutor makes him a well-rounded candidate for the bench.

Further, Judge Reyes' current position as a United States Magistrate Judge for the United States District Court for the Eastern District of New York, which he has held since 2006, makes him uniquely prepared for this nomination. As a Magistrate Judge, he has presided over 33 trials, including 15 jury trials. Judge Reyes will bring his vast experience in a variety of areas of law, including labor law, civil rights, and trademark law, to the Eastern District of New York.

In addition to his duties as a judge, Judge Reyes fosters the next generation of legal professionals both by teaching at Brooklyn Law School from 2008 to 2017 and currently serving on their Board of Trustees. Judge Reyes's commitment to justice and involvement in New York's legal community has not gone unnoticed. He received the Diversity Leadership Award from Brooklyn Law School's Latin American Law Student Association and Brooklyn Law School's Alumnus of the Year Award in 2012. Further, in 2016, he was also awarded the Jack B. Weinstein Mediation Settlement Award from the Federal Bar Association, Eastern District of New York Chapter.

Not only is Judge Reyes incredibly qualified for the Eastern District of New York – he would make history on that bench. If confirmed, Judge Reyes would be the second Latino man to serve on the Eastern District of New York. It is critical that our courts reflect the diversity of the communities served, and the confirmation of Judge Reyes would be a step closer to equitable representation of Latinx Americans on our federal courts. For all these reasons, I believe the confirmation of Judge Reyes to this seat would make the federal bench stronger.

Sincerely,

Rakim H.D. Brooks

Rakim Brooks
President, Alliance for Justice

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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acwilliams@jonesday.com

November 22, 2022

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Judge James Edward Simmons Jr. to the United States District Court for the Southern District of California

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge James Edward Simmons Jr., who has been nominated by the President to the United States District Court for the Southern District of California. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Simmons is **"Well Qualified"** to serve on the United States District Court for the Southern District of California. One member of the Standing Committee recused herself from voting due to a conflict.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Judge James Edward Simmons Jr. (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

MAUREEN F. HALLAHAN
Assistant Presiding Judge

The Superior Court
OF THE
State of California
SAN DIEGO

Mailing Address
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San Diego, California 92112-2724

November 23, 2022

The Honorable Dick Durbin
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: **Letter of Support for the Honorable James E. Simmons, Jr., Nominee for the United States District Court for the Southern District of California**

Dear Chairman Durbin and Ranking Member Grassley:

It is an honor for me to write this letter in support of the nomination of Judge James E. Simmons Jr. to the United States District Court, Southern District of California. I am the Assistant Presiding Judge of the San Diego Superior Court, and I have had the privilege of serving with Judge Simmons on the San Diego Superior Court for the past five years.

As you evaluate his qualifications as a judge on the United States District Court, Southern District of California, you can be confident that Judge Simmons possesses the attributes necessary to excel in this position. He has a record of excellence, integrity, and a strong commitment to the justice system.

Judge Simmons' background shaped the remarkable person he is today. He grew up in South Central Los Angeles and was raised by a single mother. As a cafeteria worker at a local elementary school, his mother made minimum wage and struggled to provide food, shelter, and utilities for Judge Simmons and his three older sisters. Despite these struggles, his mother instilled in him the importance of education, a respect for learning, a desire to succeed, and the confidence to believe he could accomplish anything he wanted. At a young age Judge Simmons took on the role of the "man of the house" helping support and care for his mother and sisters. He also navigated the gangs of South Central Los Angles, and the multiple moves the family was required to make though the years. He attended college then law school and inspired his sisters to pursue their education. He decided to become a prosecutor and by reputation he was a fair, ethical and diligent Deputy City Attorney and Deputy District Attorney.

Judge Simmons has a deep and broad knowledge of the law and a calm and thoughtful judicial demeanor. He instills confidence in those with whom he interacts, on and off the bench. He manages a heavy criminal master calendar, not only assigning cases but conducting hearings, including preliminary hearings and motions as well as civil and restraining order trials. He is trusted and well respected by both the prosecution and the defense bar and thus is effective in not only managing cases but settling those cases that can be settled without the necessity of a trial. His leadership of the North County branch and his willingness to do whatever is necessary has earned him the reputation of an extraordinary person and great judge.

Judge Simmons has strong proven organizational, administrative and management skills. He distinguished himself as a leader on our court and was selected to be the supervising judge of San Diego's largest branch court, the North County Branch. During his tenure he helped guide the North County Branch through the reopening after the COVID 19 court closures and difficulties that followed. Additionally, in November 2021, there was a partial collapse of the ceiling in a courtroom in the North County Branch, which led to the discovery of multiple safety and construction issues that are still being resolved. Judges shared chambers and courtrooms, portions of the building, including the family law courtrooms and chambers, were off limits for some time and paper files were difficult to access. Judge Simmons was a steady hand that gave everyone, judges, staff, and the public the confidence that matters would be handled efficiently and effectively despite these setbacks.

Judge Simmons serves the people of the State of California with dignity and humility. He is dedicated to the judicial process and to equal access to justice for all. We will miss him on the San Diego Superior Court but know he will make remarkable contributions and be a wonderful colleague on the United States District Court, Southern District of California.

Thank you for taking the time to read this letter of support. If you have any questions, please feel free to contact me at 619-844-5925 or by email at Maureen.Hallahan@sdcourt.ca.gov.

Sincerely,

Maureen F. Hallahan

MAUREEN F. HALLAHAN
Assistant Presiding Judge of the Superior Court

cc: Mr. Phillip Brest *(via email only)*
Mr. Brendan Chestnut *(via email only)*

The Superior Court
OF THE
State of California
SAN DIEGO

Chambers of
CARLOS O. ARMOUR
Judge of the Superior Court

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November 22, 2022

SENT VIA EMAIL
AND U.S. MAIL

The Honorable Dick Durbin, Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley, Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter of Support for the Honorable James E. Simmons, Jr., Nominee for the United States District Court for the Southern District of California

Dear Chairman Durbin and Ranking Member Grassley:

I am pleased to write this letter of recommendation on behalf of Superior Court Judge James E. Simmons, Jr., nominee to U.S. District Court for the Southern District of California. I have known Judge Simmons for over fifteen years professionally and consider him to be eminently qualified for this position and has my emphatic support.

I first met Judge Simmons when I was a supervisor in the San Diego County District Attorney's Office. Judge Simmons was a Deputy assigned to a specialized violent crime unit and I became acquainted with him through his reputation as an outstanding trial lawyer. Judge Simmons quickly set himself apart from others, with his outstanding trial skills, attention to detail and pleasant manner. His ability to handle some of the most complex and high-profile cases while maintaining the highest level of professional and ethical conduct earned him local recognition. This is exemplified by the numerous accolades that Judge Simmons received during his tenure in the District Attorney's Office.

Since his appointment to the Superior Court by California Governor Jerry Brown in November 2017, Judge Simmons has maintained his commitment to excellence in his new role as a jurist and I have been fortunate to sit alongside him in the Court's North County Branch. Indicative of how his fellow colleagues view his work ethic and leadership, after only a few short years on the bench Judge Simmons was selected earlier this year to serve as Supervising Judge of

the North County Branch, a court with over thirty Judges that handles the entire spectrum of civil and criminal cases.

Judge Simmons will make an excellent District Court Judge for the following reasons: He appears to be in excellent health and ready to take on the challenge of the District Court. He is familiar with the demands of the courtroom and the long hours of concentration necessary to follow the flow of evidence in trial. He enjoys the dynamics of a high-profile case yet recognizes that more mundane judicial duties must be handled with equal aplomb and attention to detail. He has a strong work ethic and is willing to work long hours if necessary. His years in practice and on the Bench have prepared him to work under pressure to resolve complex issues of law and evidence. In addition, he is acutely aware of the impact that his decisions have on others and exercises his discretion in an informed, fair, and judicious manner.

Scrutiny of Judge Simmons's personal and professional conduct will reflect favorably on his character as a nominee for confirmation to the District Court. He has taken advantage of educational opportunities to reach the goals that he has set for himself. He has conducted his personal and professional affairs in a manner that have reflected positively on he and his family.

Judge Simmons's conduct on the bench is in the best tradition of a judicial officer. He is committed to preserving a system of justice which is the cornerstone of our society. He believes that everyone who appears in front of him regardless of who or what they are receive a fair hearing - "their day in court." He is confident in the knowledge that those who leave his courtroom whether they prevailed or not were afforded an intelligent, unbiased, and fair determination of the issues before the court.

History has long established that the fair administration of justice is essential to the health and well-being of any society. As a fellow Judge I gladly and highly recommend Judge Simmons for the District Court, secure in the knowledge that he will discharge his duties fairly and impartially and will uphold and protect the Constitution in the highest traditions of the Judiciary.

Sincerely,

Carlos O Armour

CARLOS O. ARMOUR
Judge of the Superior Court

COA/sw

The Superior Court
OF THE
State of California
SAN DIEGO

Chambers of
JAMES A. MANGIONE
Judge of the Superior Court

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November 22, 2022

The Honorable Dick J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington D.C. 20510

Re: Letter of Support for the Confirmation of the Honorable James E, Simmons, Jr., Nominee for the U.S. District Court for the Southern District of California

Dear Chairman Durbin and Ranking Member Grassley:

I have had the pleasure of knowing Judge Simmons for almost seven years. I did not know him during his career with the District Attorney's Office, nor have I seen him on the bench.

I have, however, had the pleasure of numerous lunches with James during which I formed a **very** positive opinion. He is grounded. He is a great father and family man. You know about his background-he sincerely cares about his community. My conversations with him tell me he is very sound in his approach as a criminal judge. He treats all with respect. His sentences are even-handed. Importantly, he is highly respected by his fellow judges and the local Bar.

By way of background, I practiced law for 34 years. I have been a judge for 7. I am one of only 3 judges in San Diego County (of 130), who is a Fellow in the American College of Trial Lawyers. When the local committee approached me for recommendations for the Federal Bench, the **first** name I gave them was James Simmons.

If the foregoing attributes are what you are looking for in a Federal Judge, you hit the jackpot with Judge James Simmons. Neither this august body, nor the President, will regret this choice.

I unqualifiedly recommend Judge James Simmons for this position.

I stand ready to answer any questions.

Very truly yours,

James A. Mangione
Judge of the San Diego Superior Court

JAM/ht

MICHAEL T. SMYTH
Presiding Judge

The Superior Court
OF THE
State of California
SAN DIEGO

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November 23, 2022

The Honorable Dick Durbin, Chairman
The Honorable Chuck Grassley, Ranking Member
United States Senate, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter of Support for the Confirmation of Hon. James Simmons, Nominee of the United States District Court for the Southern District of California

Dear Chairman Durbin and Ranking Member Grassley:

I am writing in support of the confirmation of The Honorable James E. Simmons, Jr. as a Federal Judge for the Southern District of California. As a Superior Court Judge of twenty years, and as the current Presiding Judge of the San Diego Superior Court, I have known James personally and professionally for his entire career as an attorney and judge, and therefore feel confident in my assessment of his qualifications for the Federal Bench.

Judge Simmons joined our court in 2017, just over five years ago. Most judges at this stage in their judicial careers would find themselves finally feeling comfortable in the unique role they have in our justice system, their feet finally wet. James is not "most judges." Judge Simmons' experience, both growing up and as a criminal prosecutor, prepared him well for the bench. When he began his first assignment, in Criminal Arraignments, Judge Simmons immediately demonstrated the temperament, judgment, and collaborative spirit that we as judges aspire to.

Judge Simmons is one of those very few people whom I describe as "hyper-competent." Indeed, I selected Judge Simmons to serve as the Supervising Judge at our North County Courthouse, the largest branch court in San Diego County, just four years into his judicial career. This would normally be considered extraordinary, but my decision was welcomed by all, including his more tenured colleagues – Judge Simmons was considered to be an obvious choice, and I certainly agreed with that. He is firm but fair, respected by attorneys on both sides of the aisle, and has proven to be highly effective in all of his judicial assignments.

Judge Simmons is known to his colleagues on the bench as one of the kindest, hardest working, and most competent judges we have here in San Diego County. I have frequently said that everyone has their detractors, including me unfortunately, but over these almost two decades of knowing and then working with Judge Simmons, I have never heard a single negative thing said about him – not from colleagues, not from staff, and not from attorneys. He is, I like to say, the real deal.

Judge Simmons confirmation to the District Court will leave a gaping void on our bench, but one that I welcome – Judge Simmons has earned this opportunity, and I will be happy for him, but the Southern District of California and the community it serves will be the real beneficiaries. I therefore give my highest recommendation to the confirmation of Judge James Simmons to the Federal Court for the Southern District of California.

Sincerely,

MICHAEL T. SMYTH
Presiding Judge of the Superior Court

The Superior Court of the State of California

CHAMBERS OF
RODERICK W. SHELTON
JUDGE OF THE
SAN DIEGO SUPERIOR COURT

SAN DIEGO
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November 23, 2022

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Sent via email to Philip Brest
Office of Senator Dick Durbin
Phillip_Brest@judiciary-dem.senate.gov

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Sent via email to Brendan Chestnut
Office of Senator Chuck Grassley
Brendan_Chestnut@judiciary-rep.senate.gov

RE: Hon. James Simmons: Nominee for the United States District Court Southern District California

Dear Chairman Durbin and Ranking Member Grassley:

Please accept this letter as my recommendation for the Honorable James Simmons for the position of United States District Court Judge of the Southern District of California. I have had the honor and privilege of knowing Judge Simmons for almost 20 years. In that time, I have come to know him as an exceptional attorney and jurist. I first met Judge Simmons in the San Diego County District Attorney's Office. As a deputy district attorney, Judge Simmons rose quickly in the office. He was known for his intellect, advocacy skills, ethics, fairness, and his ability to work well with his colleagues and the defense bar. Prior to being appointed to the San Diego Superior Court, Judge Simmons was a member of the gang prosecution unit, where he prosecuted murder and complex gang related cases.

Based upon his work in the District Attorney's Office, Judge Simmons was appointed to the San Diego Superior Court at the age of 37. Once again, Judge Simmons rose quickly in the Superior Court. He presided over misdemeanor and felony cases in our North County Branch. Based upon his stellar reputation as a fair, ethical, and extremely hard-working jurist, he was selected to preside over the felony disposition department in the North County Branch. Because of his exceptional work as the felony disposition judge, the presiding judge of the San Diego Superior Court recognized his leadership

qualities and selected him to be the assistant supervising judge of the North County Branch. After a short stint as the assistant supervising judge, he was selected as the first African American supervising judge of the North County Branch of the San Diego Superior Court. Supervising Judge Simmons has a reputation for fairness and hard work. He has made significant changes to the North County Branch while at the same time dealing with lack of courtrooms due to the unfortunate collapse of the courthouse roof. Judge Simmons has worked tirelessly throughout this ordeal to make sure the North County Branch is functioning properly. He receives high praises from his colleagues as well as the attorneys that appear in front of him.

Although Judge Simmons is an excellent jurist, I believe what may be more important is his commitment to community service and family. Judge Simmons is a life member of the Earl B. Gilliam Bar Association, the California Association of Black Attorneys, as well as the African American Association of Californian Judicial Officers (AAACJO). He is an active member of the legal community and can be found speaking to attorneys and law students about their future career. Furthermore, he is extremely active is his children's lives as a coach and active participant in all their activities.

I highly recommend my friend to the position of United States District Court Judge. Judge Simmons will treat those who come in front of him fairly and with respect. Judge Simmons truly has a passion for the law and will work tirelessly if selected to serve on the federal bench. It is with great humility and pride that I was asked to write a letter of recommendation of Honorable James Simmons. I wholeheartedly without hesitation recommend him to serve on United States District Court.

If you have any questions, please contact me at 619-450-5555.

Sincerely,

Roderick W. Shelton

Hon. Roderick W. Shelton
San Diego Superior Court

Statement Of Senator Patrick Leahy (D-Vt.)
Senate Judiciary Committee
On the Nomination of Amy Solomon
to serve as Assistant Attorney General for the Office of Justice Programs
December 7, 2022

I am so pleased that President Biden has nominated Amy Solomon to serves as the next Assistant Attorney General for the Office of Justice Programs (OJP) at the U.S. Department of Justice. OJP is a critical arm of the Justice Department responsible for providing federal grants, training, technical assistance, and other resources to communities across the country to reduce crime and improve our criminal justice system. There could not be a more well-qualified nominee for this position than Amy Solomon, who has dedicated her career to advocating for bipartisan, evidence-based reforms to our criminal justice system. Having spent her professional life improving the justice system for juveniles, crime victims, and marginalized communities of color, Amy brings the right set of skills to the table and will excel if confirmed to be the Assistant Attorney General for OJP.

As a Vermonter and Chairman of the Senate Appropriations Committee, I can attest firsthand to how vital the work and mission of OJP is. From providing life-saving bullet proof vests to law enforcement officers to delivering front line services for victims of domestic violence, OJP directly impacts millions of lives in communities across Vermont and the country. It is no exaggeration to state that the OJP is often the face of the Justice Department in small towns and big cities across America. And I couldn't think of anyone better than Amy Solomon to take its helm.

Ms. Solomon has defined her public service career with bipartisan, evidence-based approaches to the problems facing our criminal justice system. With over a decade of experience at OJP, she has worked hard to build relationships of trust between the justice system and marginalized communities of color. In May of 2021, she was appointed by Attorney General Merrick Garland to serve as the Principal Deputy Assistant Director for OJP, overseeing annual grants totaling approximately $5 billion in support for state, local, and tribal criminal justice services. During her time as OJP's Principal Deputy Assistant Director, she has been responsible for providing over $190 million in funds to state law enforcement agencies; $370 million to law enforcement programs; and $90 million for human trafficking prevention, victim services, and research in responses to trafficking. In addition to distributing grant funds, OJP under Ms. Solomon's tenure both funded and produced major research to help improve various aspects of our criminal justice system.

Prior to her time at OJP, she served as the Vice President of Criminal Justice for Arnold Ventures, a philanthropic organization focused on policy research and advocacy on a variety of issues, including the criminal justice system. Before Arnold Ventures, she worked at the Justice Policy Center at the Urban Institute for 10 years, focusing on prisoner reentry and public safety. And her commitment to public service and improving our criminal justice system started early in her career – her very first job out of college was as a VISTA Volunteer at the Department of Corrections in my home state, Vermont.

Ms. Solomon's work in and out of government has consistently focused on creating a more just and evenhanded criminal justice system that works for all communities. And through her tireless work in and out of government on these issues, she has built deep and meaningful relationships with stakeholders across the ideological spectrum. It is therefore no surprise that her nomination has received broad support, including from the International Association of Chiefs of Police, The Correctional Leaders Association, the American Conservative Union, and 46 crime victim survivors, advocates, and service providers.

I am confident that, if confirmed to lead OJP, Amy Solomon would be unwavering in her commitment to providing communities across the country the tools and resources they need to improve Americans' lives. After more than five years without a Senate-confirmed nominee to lead OJP, Amy Solomon's nomination is a long-overdue step to fill this key role. I look forward to her swift confirmation by the United States Senate.

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Crime Victims/Survivors, Victim Services & Mental Health Professionals' Support for Amy L. Solomon to Serve as Assistant Attorney General, U.S. Department of Justice, Office of Justice Programs

July 14, 2022

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Richard J. Durbin Chairman
Committee on the Judiciary, United States
Senate, Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member Committee on the
Judiciary, United States Senate
Washington, DC 2051

Dear Senators Schumer, McConnell, Durbin and Grassley:

We are writing to express our strongest support for Ms. Amy Solomon to serve as the U.S. Department of Justice's Assistant Attorney General, Office of Justice Programs (OJP). Many of us have personal experience as victims and survivors of crime and all have long been advocates for and direct providers of critical assistance services to crime victims and survivors. And many of us have had the opportunity to personally work with Ms. Solomon across her 30-year career span of outstanding public service. Not only is she a dedicated public servant, but she is also a strong advocate for services and rights for victims and survivors of crime.

As we all know, the vast majority of crimes that directly threaten the lives and well-being of Americans are committed and enforced at the state, local and Tribal levels. The principal role of the federal government is to provide leadership and support—financial, programmatic and technical—to those on the front lines of public safety. The Office of Justice Programs is the federal government's primary agency to partner with its stakeholders in implementing the goal "of improving the nation's capacity to prevent and reduce crime, assist victims and enhance the rule of law by strengthening the criminal and juvenile just systems." OJP does this through the awarding of billions of dollars of financial support, providing training and technical assistance, and undertaking relevant research and statistical data collection and analysis.

Ms. Solomon's impressive vitae literally *defines* what public service to improve individual and community safety should be. Her important work in the nonprofit sector, entities that promote evidence-based approaches to public safety, and various offices within the USDOJ has always been collaborative, inclusive, inspiring and crime survivor-centered. Ms. Solomon is a widely respected leader in the disciplines of criminal justice, corrections, victim/survivor services, reentry and public safety. Her service as the Executive Director of the Federal Interagency Reentry Council under the Obama Administration, and as Vice President of Criminal Justice at Arnold Ventures, resulted in the strengthening of corrections and reentry policies and programs

that always included consideration of the needs of crime survivors, and that recognized and sought to mitigate the cycle of violence that is too often foundational to delinquent and criminal behavior.

As many of us know, Ms. Solomon's strong leadership and visionary skills are inspiring and impressive. She is well known and respected for expanding the traditional roster of key stakeholders in public safety to include representatives from traditionally-underserved and marginalized communities, and to build trust and opportunities for critical ongoing and developing partnerships.

Crime victims and survivors, and those who serve them, are too often left out of important policy and programmatic discussions related to criminal and juvenile justice and public safety. This decades-long oversight has already begun to be remedied through Ms. Solomon's strong leadership at OJP, and across the entire USDOJ, through her commitment to collaboration that strengthens rights and services for victims and survivors of crime and their families.

There is *nobody* who is more qualified to fulfill the important and challenging role of the Assistant Attorney General for the Office of Justice Programs. Her three decades of work that has consistently recognized the important needs of crime survivors, and her proactive efforts that have ensured that they and the advocates who assist them have a critical role in policies and programs that affect them, are the very foundation of our strong support for her nomination.

We appreciate your consideration of our letter of support for Amy Solomon to serve as OJP's Assistant Attorney General, and urge the Senate Judiciary Committee to quickly confirm her so she can continue to promote public safety and, at the same time, elevate the importance of individual safety to crime victims, survivors and community members across our nation.

Thank you very much.

Sincerely,

Aileen Adams, Chair
Weingart Foundation Board
Former Director, USDOJ Office for Victims of Crime
Los Angeles, CA

Lenore Anderson, President
Alliance for Safety and Justice

Marti Anderson, MSW, LISW
Iowa State Representative
House District 36
Des Moines, IA

Eugenia (Jennie) Barr, Ph.D.
Eugenia Barr Counseling and Consulting
Austin Sports Behavioral Health
Austin, TX

Support for Amy L. Solomon
OJP Assistant Attorney General
Page 3

Aurelia Sands Belle
Charleston, SC

Connie L. Best, Ph.D.
Professor Emerita
Mt. Pleasant, SC

Terry Burnside
House of Hope
Peoria, IL

Russell Butler
Dunkirk, MD

Dolores Castaneda
Padres Angeles
Chicago, IL

Connie Clery
Founder, Clery Center for Security on Campus, Inc.
Newtown Square, PA

Steve Derene
Madison, WI

Nancy Feldman
Littleton, CO

Amy Fettig, Executive Director
The Sentencing Project
Washington, DC

Clara Forman
Peoria, IL

Stephanie Frogge
Victim/Survivor Advocate & Restorative Justice Practitioner
Lincoln, NE

Faith Gladden
Dallas, TX

Pastor Michael E. Grady
El Paso, Texas

Vickey Cornelison-Grant
Victim Advocate
Charleston, SC

Melinda Hamilton
Mothers of Murdered Angels
Fort Worth, TX

Doris Hernandez
Padres Angeles
Chicago, IL

Cylenthia Hoyrd
The Village Resource Group
Houston, TX

James G. Jones, Executive Director
Community Justice Center
Lincoln, Nebraska

TraVonn Jones
East St. Louis, IL

Dean Kilpatrick, Ph.D.
Sullivan's Island, SC

Sandra Pavelka, Ph.D.
Fort Myers, FL

Janice Harris Lord
Trauma Therapist
Arlington, TX

Beverly McClain
Families of Slain Children, Inc.
Jacksonville, FL

Tashante McCoy
The Owl Movement
Stockton, CA

Celina Meadows
Helping Others Onward
Phoenix, AZ

Support for Amy L. Solomon
OJP Assistant Attorney General
Page 4

David Osborne
Fairfax, VA

Kristina Plummer
Atlanta, GA

Feletta Proudme
Jacksonville, FL

Bertha Purnell
Chicago, IL

Alyssa A. Rheingold, PhD
Clinical Psychologist
Charleston, SC

Maragrita Romo
Farmworkers Self-Help Inc.
Dade-City, FL

Anne Seymour
National Crime Victim/Survivor Advocate
Washington, DC

Deleah Sharp
Identify Your Dream
Pontiac, MI

Steve Siegel
Director Emeritus, Special Programs Unit
Denver District Attorney's Office
Denver, CO

Patricia Smallwood, MS LMFT NCC
Dr. Bill Lewis Center for Children
Fort Wayne, IN

Daniel W. Smith, Ph.D.
Charleston, SC

Larry Tackman
Albuquerque, NM

Aswad Thomas, National Director
Crime Survivors for Safety and Justice
Atlanta, GA

Shari Ware
Still Standing
Detroit, MI

Tracey Williams
Fort Pierce, FL

Pearl Wise
Don't Hate the Race
York, PA

Kathleen Zupan
Fitchburg, WI

Vera INSTITUTE OF JUSTICE

July 27, 2022

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Majority Leader Schumer, Leader McConnell, and Senators Durbin and Grassley:

I am writing on behalf of the Vera Institute of Justice, a 60-year-old national organization dedicated to ending the overcriminalization and mass incarceration of people of color, immigrants, and people experiencing poverty, to express strong support for Amy Solomon's nomination to serve as the U.S. Department of Justice's Assistant Attorney General, Office of Justice Programs (OJP) and to urge swift confirmation in the Senate.

The United States incarcerates nearly two million people on any given day—more than any other country in the world. OJP is tasked with providing leadership and support in order to prevent and reduce crime, assist victims, and strengthen the criminal and juvenile justice systems. OJP achieves these goals by awarding financial support to stakeholders, providing training and technical assistance, as well as conducting research, data collection and analysis. It is crucial that the candidate selected for this position is committed to promoting just solutions that advance true public safety.

Amy Solomon is uniquely well qualified to lead this important work. She is an experienced public servant with a rich history of working on corrections reform, reentry and public safety. She has long promoted best practices for reducing recidivism, improving community reentry and building trust between the justice system and communities of color. Amy used her position as Vice President of Criminal Justice at Arnold Ventures to expand economic opportunities for people with criminal records and reduce reliance on prisons, initiatives that align with Vera's mission and work.

Ms. Solomon is a national expert, especially in the area of reentry and providing meaningful opportunities and resources for system-impacted people. This was a focus of her work at the Urban Institute earlier in her career and then as a Senior Advisor in the very office that she now leads. During her tenure at OJP during the Obama Administration, Ms. Solomon was the first Executive Director of the Federal Interagency Reentry Council, where she spearheaded the development of consequential policies like the federal Ban the Box rule and the Second Chance

34 35th Street, Suite 4-2A, Brooklyn NY 11232 t 212 334 1300 f 212 941 9407 vera.org

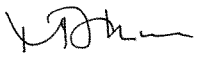
Pell Initiative. The Ban the Box rule prohibits certain federal employers and contractors from requiring a job applicant to disclose his or her criminal background on a job application or during an interview prior to a conditional job offer being extended. This change continues to open up job, education, and housing opportunities for those formerly incarcerated.

The Second Chance Pell Initiative is a program administered by the U.S. Department of Education that provides need-based Pell Grants for postsecondary education to people in state and federal prisons. The program has been so successful that the Department of Education expanded the initiative in 2020. The program now has 130 participating colleges from 42 states, the District of Columbia and the Federal Bureau of Prisons. Our data shows that this program has increased public safety, lowered recidivism and saved taxpayer dollars.

Ms. Solomon has already made a significant impact as the head of OJP during the Biden Administration. OJP is one of the key federal components responsible for implementing the Executive Branch's public safety and criminal justice agenda. Ms. Solomon's leadership has resulted in more grant funding dedicated toward community violence intervention strategies, the availability of advanced training and technical assistance on comprehensive approaches to addressing violence, and a deep examination of how OJP's activities and mission should center system-impacted people. The latter is exemplified by the expansion of the Second Chance Fellows program as well as the appointment of Eddie Bocanegra, a system-impacted expert on justice and safety issues, as a Senior Policy Advisor on Ms. Solomon's staff.

The Vera Institute has had the privilege to work with Ms. Solomon for many years and has every confidence she is the right person to lead OJP. The Vera Institute strongly supports Amy Solomon's nomination and urge her swift confirmation.

Sincerely,



Nick Turner

GEORGE MASON UNIVERSITY
Clarence J. Robinson Professors
4400 University Drive, MS 1D6, Fairfax, Virginia 22030
Phone: 703-993-2171; Fax: 703-993-2175

August 15, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: **Nomination of Amy L. Solomon as Assistant Attorney General for the Office of Justice Programs of the U.S. Department of Justice**

Dear Chairman Durbin and Ranking Member Grassley,

Having served as Assistant Attorney General (AAG) for the U.S. Department of Justice's Office of Justice Programs (OJP) for nearly 10 years, I write to express my support for the confirmation of Amy L. Solomon for that position.

As you know, OJP's mission differs from that of other Justice Department components. But its role is a vital one – supporting innovation and knowledge development based on "what works" in addressing crime, and serving as a key link between DOJ and states, localities and tribal communities on criminal and juvenile justice and crime victim assistance. This is particularly crucial right now as the nation faces tremendous challenges in dealing with crime and ensuring the fair administration of justice. I have known Ms. Solomon well for more than 25 years since she came to OJP in the '90s after receiving a Master's from Harvard's Kennedy School of Government. When I returned to OJP again as AAG in 2009, I hired her as my Senior Advisor. From this long working relationship, I am certain Ms. Solomon possesses the qualities needed to lead OJP.

Two of Ms. Solomon's greatest strengths that would be invaluable assets as OJP's leader are, first, her ability to effectively use research to inform policy and practice, and, second, her successes at interagency collaboration (a goal often discussed in

government but, in my experience, less frequently achieved over the long term). One example illustrates both of these skills: When I was AAG in the Obama Administration, Amy served as Executive Director of the Federal Interagency Reentry Council. This was a Cabinet-level body that met every 6 months to coordinate the effort and set long range goals. But the working heart of the initiative was a staff level group – chaired by Amy - that met monthly with representatives from more than two dozen federal agencies. As they grappled with implementing changes agreed to by the Council – such as drafting proposed communications from HUD on fair housing guidance relating to reentry – Amy negotiated debates in the group on language and approach. Because of her deep familiarity with research on reentry, she was able to provide the group with the latest scientific findings on effectiveness in this area. When some agency staff balked at proposals, she reached out to follow up personally with participants to resolve disputes and keep momentum going. A Government Accountability Office (GAO) review called the Reentry Council one of the most successful interagency collaborations it had seen in the federal government. From my own experience in government, I attribute that success to Amy Solomon's tremendous leadership skills, her strengths as a strategist and conceptualizer, and – importantly – her strong interpersonal skills. It also illustrated that, without fanfare, she got results.

Amy Solomon is, simply put, one of the most capable people among the hundreds and hundreds with whom I've worked over a long career. I encourage you to take prompt action on Ms. Solomon's nomination, and appreciate the opportunity to provide these views.

Respectfully submitted,

Laurie O. Robinson
Clarence J. Robinson Professor Emeritus of
Criminology, Law and Society
George Mason University

Assistant Attorney General, Office of Justice
Programs
1993 – 2000 and
2009 – 2012

Michael D. Thompson
6669 32nd Place, NW
Washington, DC 20015

August 17, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

I am writing in support of Amy Solomon's nomination to be the next Assistant Attorney General for the Office of Justice Programs in the US Department of Justice.

I have known, and worked closely with, Amy for nearly 25 years. As the founder and head of the Justice Center at the Council of State Governments, a membership association serving all state leaders in the three branches of government, I partnered with Amy when she was employed by the Office of Justice Programs under multiple administrations and when she worked for the Urban Institute. In addition, while I was a senior vice president with the Pew Charitable Trusts and she was a top official at Arnold Ventures, our organizations collaborated closely on important initiatives.

I made it a priority to work with Amy whenever possible because of her deep expertise on criminal justice policy. Whether on the subject of programs that reduce recidivism, effective approaches to community supervision, or efforts to improve court-based decisions about pretrial release, Amy stays on top of the latest research, eagerly solicits new analyses to understand trends in the field and generate new insights, and insists findings be packaged and communicated in ways that make this information accessible and actionable for the field.

Amy has always been highly regarded among leaders in law enforcement, courts, corrections, and victim services because of her deep understanding of the role that local and state governments have in setting and implementing criminal justice policy. From a variety of perches in the federal government and philanthropy, Amy designed, implemented, and oversaw grant programs on topics ranging from prison reentry to violence reduction. In so doing, she demonstrated a keen appreciation that no two states are alike and the role of the federal government is to foster state and local innovation, not to impose one-size-fits-all mandates.

When my new job at Pew made it necessary for my wife and children and me to relocate from New Jersey to Washington, DC five years ago, I also saw first-hand that Amy and her husband, Dr. Michael Solomon, were active in the public elementary, middle, and high schools that our children shared. And, much in the same way people across the US in government and advocacy genuinely enjoyed being around Amy and her contagious devotion to public service, so did her neighbors appreciate her commitment to family and the community.

In sum, I cannot think of anyone better qualified or better suited for the position to which Amy Solomon has been nominated. I welcome any opportunity to discuss further my endorsement of her nomination (mike@mikethompsonconsulting.net / 917.930.8753).

Sincerely yours,

Michael D. Thompson

IACP
International Association of Chiefs of Police
44 Canal Center Plaza, Suite 200 | Alexandria, VA 22314, USA | 703.836.6767 or 1.800.THEIACP | www.theIACP.org

August 22, 2022

The Honorable Dick Durbin
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

On behalf of the International Association of Chiefs of Police (IACP), I am pleased to inform you of our support for the nomination of Amy L. Solomon as Assistant Attorney General of the Office of Justice Programs (OJP), U.S. Department of Justice (DOJ).

In her current role as the Principal Deputy Assistant Attorney General of OJP, Ms. Solomon has demonstrated that she is a committed public servant and an effective steward of public resources. Throughout her more than three decades of government, think tank, and philanthropy experience, she has gained a unique understanding of the challenges and complexities facing the criminal justice system and a deep understanding of the needs of federal, state, local, and tribal law enforcement. She is an outspoken advocate for data-driven, research-based policy solutions to crime and justice problems and has demonstrated an unyielding commitment to the safety of the police, the public, and victims of crime.

We believe that Ms. Solomon's experience, expertise, and record of success are evidence of her outstanding qualifications to serve as the Assistant Attorney General of OJP. The IACP urges the Judiciary Committee, and the members of the United States Senate, to swiftly confirm Amy L. Solomon.

Thank you for your attention to this matter. Please let me know how the IACP may be of further assistance in this vitally important process.

Sincerely,

Dwight Henninger
President

President
Chief Dwight E. Henninger
Vail, CO, Police Department

Immediate Past President
Chief Cynthia E. Renaud (Ret.)
Santa Monica, CA, Police Department

First Vice President
Chief John Letteney
Thomasville, GA, Police Department

Second Vice President
Chief Wade Carpenter
Park City, UT, Police Department

Third Vice President
Chief Ken A. Walker
West University Place, TX, Police Department

Fourth Vice President
Director David B. Rausch
Tennessee Bureau of Investigation

Fifth Vice President
Doug Shoemaker
Grand Junction, CO, Police Department

Vice President At-Large
Chief Sean Duggan
Chandler, AZ, Police Department

Vice President At-Large
Chief Kristen Ziman (Ret.)
Aurora, IL, Police Department

International Vice President
Director General Liam Price
Royal Canadian Mounted Police

Vice President-Treasurer
Chief Ronald A. Sellon
Mansfield, MA, Police Department

General Chair, Division of State and Provincial Police
Colonel Matthew Langer
Minnesota State Patrol

General Chair, Division of State Associations of Chiefs of Police
Chief James G. Hicks
Natick, MA, Police Department

General Chair, Midsize Agencies Division
Chief Edward Walsh
Taunton, MA, Police Department

Parliamentarian
Chief Robert Champagne (Ret.)
Peabody, MA, Police Department

Executive Director / Chief Executive Officer
Vincent Talucci, CAE
Alexandria, VA

Deputy Executive Director / Chief Operating Officer
Terrence M. Cunningham
Alexandria, VA

CORRECTIONAL LEADERS ASSOCIATION

Executive Committee
President, Anne Precythe
Vice President, Rob Jeffreys
Treasurer, Josh Tewalt

Regional Representatives
Northeast, Carol Mici
Southern, Bryan Collier
Midwest, Heidi Washington
Western, Dean Williams

August 29, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the Correctional Leaders Association (CLA), we write to express support for the confirmation of Amy Solomon to serve as the Assistant Attorney General for the Office of Justice Programs, U.S. Department of Justice.

CLA is a national organization representing the correctional executives who lead over 400,000 correctional professionals and are responsible for over eight million incarcerated individuals, probationers, and parolees. Our members include correctional administrators for all 50 states, the Federal Bureau of Prisons, four territories, four large urban jails, and components of military corrections.

I, and my correctional colleagues, have developed a positive relationship with Ms. Solomon through her support for justice reinvestment initiatives, reentry, Pell reinstatement and corrections reform. We have had the pleasure of hearing her present at justice-related conferences and events and give voice to programs designed to heighten public safety.

CORRECTIONAL LEADERS ASSOCIATION

As you may know, Amy Solomon has devoted her entire career to public service both in public and private capacities. She has a wealth of knowledge and experience managing public portfolios in support of public safety. In addition to her many contributions, she exhibits a logical, compassionate, balanced approach to decision making. Much of the work CLA has performed through partnerships with other non-profit organizations has been supported by agencies like the U.S. Department of Justice, Office of Justice Programs and Arnold Ventures; two organizations Ms. Solomon has been affiliated with in the past and present. For these reasons, we are supporting her confirmation for this position.

Thank you for taking the time to read and consider our support for Ms. Solomon. I hope that it provides sufficient reason for your support of her confirmation as well. I may be reached at 573-526-6607 or Anne.Precythe@doc.mo.gov if you have any questions.

Regards,

Anne L. Precythe
President

Karol V. Mason
President
T 212-237-8600
F 212-237-8607
president@jjay.cuny.edu

The Honorable Charles E. Schumer Majority Leader
322 Hart Senate Office Building Washington, DC 20510

The Honorable Mitch McConnell Minority Leader
317 Russell Senate Office Building Washington DC 20510

The Honorable Richard J. Durbin Chairman
224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Charles E. Grassley Ranking Member
Committee on the Judiciary
152 Dirksen Senate Office Building Washington, DC 20510

September 1, 2022

Dear Committee Members:

I am writing to convey my strong support for the nomination of Amy Solomon to serve as Assistant Attorney General for the Office of Justice Programs, and to urge that she be promptly confirmed.

I am the President of John Jay College of Criminal Justice, which was founded nearly 60 years ago as a police college. Today, John Jay is known as the United Nations for justice issues, the place where difficult issues can be discussed and resolved respectfully. We are the place where people across the political spectrum and those on opposing sides of issues come to address challenging issues together, constructively.

I have known Amy since 2010, when she joined the Office of Justice Programs as a policy advisor for then Assistant Attorney General Laurie Robinson. From our first opportunity to work together, I have been impressed with Amy. That's why when I became the Assistant Attorney General for the Office of Justice Programs in 2009, I elevated Amy to be my principal policy advisor.

Amy is skilled in building bi-partisan support for work that creates safer communities. Amy led the cross-agency work to support the successful re-entry of people who were formally incarcerated back into their communities. She led efforts to support the children of people who are incarcerated. She understands how to partner with and listen to what communities need to create safety.

Amy is skilled in leading challenging conversations to consensus. This is a skill that is needed at the Office of Justice Programs, the Office responsible for supporting state and local governments in their quest to build safe and thriving communities.

From her years inside and outside of federal government service, Amy has built strong credibility among a range of stakeholders. The same groups of stakeholders who are critical to the success of the work funded by the Office of Justice Programs. Amy has strong relationships with funders who work alongside the Office of Justice Programs in many communities. Amy is well respected by governmental leaders from Governors, to Mayors, to Police Chiefs, to community organizations, all of whom are integral to the success of the work at the Office of Justice Programs.

The Office of Justice Programs, the Department of Justice and communities across the country will benefit from Amy's leadership. I urge the Committee to act favorably on Amy Solomon's nomination to serve as the Assistant Attorney General for the Office of Justice Programs, and to move her swiftly to confirmation.

Thank you for your consideration.

Sincerely,

Karol V. Mason

Karol V. Mason
President

OFFICE OF THE PRESIDENT, HAAREN HALL, Room 625
524 West 59th Street, New York, NY 10019 |

September 19, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

I am honored to provide this statement in support of the nomination of Amy L. Solomon to serve as the Assistant Attorney General for the Office of Justice Programs in the Department of Justice. I have worked with Ms. Solomon for more than a quarter century, at times as her supervisor, sometimes as her co-author, always as a friend and mentor. Based on this history, and my deep experience in the criminal justice field, I offer my support without qualification.

Allow me first to set forth my relationship with Ms. Solomon. From 1994 to 2000, I was privileged to serve as Director of the National Institute of Justice, nominated by President Clinton and confirmed by the Senate. Before assuming this position, I had extensive experience in the criminal justice field, most recently as Deputy Commissioner for Legal Matters in the New York City Police Department, and was excited by the opportunity to lead the nation's premier research institute on the issues of crime and justice. Soon after the Senate confirmed my nomination, Congress authorized significant new funding for the National Institute of Justice to carry out research on a variety of criminal justice topics. To execute these responsibilities, the Justice Department approved new positions at NIJ. As we started our search for applicants, I received a call from Frank Hartmann, director of the Program in Criminal Justice at the Harvard Kennedy School of Government, who recommended a woman he called "the best graduate student I have ever taught." That student was Amy Solomon. My colleagues at NIJI and I interviewed her and she was hired.

The intervening years have proven that Prof. Hartmann was right. Beginning with her service at NIJ, continuing through her position at the Urban Institute, then back to DOJ in the Obama Administration, and subsequently at Arnold Ventures, Amy Solomon has again and again demonstrated her brilliance, strategic savvy, good judgment, professional ethics and commitment to the cause of justice reform. In my opinion, she is one of the most gifted people I have ever worked with. If she is confirmed as Assistant Attorney General, the nation will be the beneficiary.

I have worked closely with Amy over this extensive time period and have had the privilege of watching her rise to her current position as a national leader in the justice reform sector. At NIJ, Amy led a number of our critical strategic initiatives, including our pioneering work on violence reduction strategies, the use of crime mapping techniques to guide crime prevention efforts, and a research effort to define the criminal justice challenges of the 21st Century. In the last year of the Clinton Administration, Amy and I started working closely together, with Attorney General Reno, on a topic that

became a defining feature of our working relationship – prisoner reentry. The Attorney General had asked us to answer the question, "What is the country doing to support people leaving prison?" Together we launched a suite of programs at DOJ, in close consultation with the Domestic Policy Council, the Office of Management and Budget and other cabinet agencies to focus new attention to the challenges of prisoner reentry. Amy was a critical thought-partner in these efforts, drawing on her extensive experience working in community corrections and her expertise in program evaluations.

As the Administration was coming to a close, I was recruited to join the Urban Institute as a Senior Fellow in the nascent Justice Policy Center. My agreement with the Institute was that they would provide support for the launch of a research program on prisoner reentry, and that I could hire a small team to support this work. With this agreement in place, I reached out to Amy (and one other NIJ colleague) and asked her to join me. I could not imagine a better partner on this new venture and was thrilled when she agreed.

Our work together at the Urban Institute was exhilarating. Together, we launched a multi-faceted portfolio of projects on prisoner reentry – including basic research on the experience of leaving prison, general audience publications, scholarly articles, policy analysis, and after President George W. Bush announced the Second Chance initiative, working with legislative staff on the contours of that landmark bill. The cornerstone of our portfolio was the Reentry Roundtable, which Amy and I conceived as a vehicle for generating interest in the reentry issues within a wide range of policy audiences. In a relatively short time, we had convened eight meetings of the Roundtable, in multiple cities around the country, resulting in several publications. Amy was the genius behind the Roundtable concept and demonstrated her special gift of bridging the distance between research and practice, the academy and politics, the communities and individuals most affected by incarceration and those public servants who were responsible for carrying out our country's sentencing and corrections policies.

I left the Urban Institute in 2004 and watched from afar as Amy continued this work, brilliantly building a portfolio on reentry from jails. When the Obama Administration began, and Attorney General Holder was looking for talent to continue the work on justice reform, Amy once again joined the Office of Justice Programs, working for the Assistant Attorney General, Laurie Robinson. Once again, she demonstrated her unique ability to build coalitions, work through bureaucratic hurdles to get things done, and all the time keep her focus on the north star called "justice." Several concrete accomplishments stand out – the creation of the federal reentry council (leveraging the resources of all cabinet agencies to improve outcomes for our fellow citizens facing the challenges of returning home); the National Initiative for Building Community Trust and Safety (focusing on new strategies to reduce violence, improve policing, and promote racial reconciliation between law enforcement and the community); the Executive Session on Community Corrections at Harvard's Kennedy School (to re-imagine community corrections); and the launch of the Second Chance Fellows program (bringing formerly incarcerated individuals into the policy-making process at the Office of Justice Programs). All of these demonstrated her truly unique ability to create a vision, bring people to support that vision, and execute on her vision.

Amy left government at the end of the Obama Administration and we found that we would once again have an opportunity to work together – we both joined the Laura and John Arnold Foundation (now Arnold Ventures) as this major philanthropy was seeking to expand its impact on the justice reform movement. What a pleasure it was to watch the Amy Solomon magic at work! In a few short years, she had built out an impressive portfolio of projects un the broad heading of "corrections reform" – including probation and parole, sentencing and corrections, reentry and reintegration and fines and

fees. When she accepted the call to return to public service at the Department of Justice, she left behind a talented team and a diverse national network that continues to carry out the ambitious reform agenda she designed. We at Arnold Ventures are in awe of what she accomplished

I cannot imagine a better nominee for the position of Assistant Attorney General. Since returning to the Office of Justice Programs, Amy Solomon has – once again -- demonstrated her unparalleled leadership capabilities. Those of us who have worked with her are not surprised. And I am honored to offer these comments on her behalf.

Sincerely yours,

Jeremy Travis
Executive Vice President of Criminal Justice
Arnold Ventures
3 Columbus Circle, Suite 1601
New York, NY 10019
jtravis@arnoldventures.org

September 29, 2022

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Richard J. Durbin Chairman Committee on the Judiciary, United States Senate, Washington, DC 20510

The Honorable Charles E. Grassley Ranking Member Committee on the Judiciary, United States Senate Washington, DC 2051

RE: Correctional, Probation, and Parole Leaders Letter of Support for Amy L. Solomon to Serve as Assistant Attorney General, U.S. Department of Justice, Office of Justice Programs

Dear Senators Schumer, McConnell, Durbin and Grassley:

We are writing to express our support for Ms. Amy Solomon to serve as the Assistant Attorney General for the Office of Justice Programs (OJP) within the United States Department of Justice (USDOJ). Each of us has served or currently serves as the head of a state or local probation, parole, and/or youth corrections agency, and are highly experienced and deeply invested in the work of OJP.

Ms. Solomon's public service career has spanned over 30 years, and her experience and dedication are impressive. She is committed to the values that have driven us as probation leaders and correctional administrators—advancing public safety, safely reducing overreliance on supervision and incarceration, and supporting the professionals who devote their lives to improving justice systems.

The Office of Justice Programs is the primary grantmaking entity within the USDOJ, supporting systems change efforts at the state, local, and Tribal levels. Our communities need the support of OJP in making funding available and best practices accessible, in order to implement proven and innovative strategies that keep our communities safe and reduce unnecessary incarceration. This is Ms. Solomon's third time working at OJP, equipping her with a deep understanding of the Federal government's ability and opportunities to support our local communities' efforts to keep communities safe and support the rehabilitation and well-being of system-impacted youth and adults.

Ms. Solomon has proven herself to be a great collaborator and partner, working with individuals and organizations on all sides of the justice system. Throughout her career, she has been a leader in bipartisan reentry efforts to help people safely and successfully return to their home communities following a period of incarceration.

Without reservation, we support Ms. Solomon's confirmation for this essential role. We know that Ms. Solomon will execute her duties as OJP's Assistant Attorney General with honor and integrity, and that our communities will be safer, more just, and better supported because of her leadership.

We appreciate your consideration of our letter of support for Amy Solomon to serve as the Assistant Attorney General for the Office of Justice Programs.

Sincerely,

Anne Marie Ambrose, Former Commissioner, Department of Human Services for the City of Philadelphia; Former Bureau Director of Child Welfare and Juvenile Justice Services for the Commonwealth of Pennsylvania

Phyllis Becker, Former Director, Missouri Division of Youth Services

Barbara Broderick, Chair, Executives Transforming Probation and Parole; Former Chief Probation Officer, Maricopa County, Arizona

Gladys Carrión, Co-Chair, Youth Correctional Leaders for Justice; Former Commissioner, New York City Administration for Children's Services; Former Commissioner, New York State Office of Children and Family Services

Henry Gonzales, Executive Director, Harris County Juvenile Probation

Gerald Hinzman, Former President, American Probation and Parole Association (APPA); Former Director, Sixth District Department of Correctional Services, Iowa

Deborah Hodges, Former Director, Lucas County Juvenile Court, Toledo, Ohio

Marcus Hodges, Associate Director, Washington DC Court Services and Offender Supervision Agency (CSOSA), and former President, National Association of Probation Executives (NAPE)

Martin F Horn, Former Secretary of Corrections, Commission of Pennsylvania; Former Commissioner of Corrections, City of New York; Former Commissioner of Probation, City of New York

Michael Jacobson, Executive Director, CUNY Institute for State and Local Governance; Professor, Sociology Department CUNY Graduate Center

Joe Leavey, Acting Director of Probation and Court Services, Juvenile Probation Department, Cook County, Illinois

Patrick McCarthy, Former Division Director, Delaware Department of Services for Children, Youth and their Families

David Muhammad, Former Chief Probation Officer, Alameda County, CA

Mario A. Paparozzi, Ph.D., Professor, Department of Sociology and Criminal Justice University of North Carolina at Pembroke; and former Chairman, New Jersey State Parole Board

Anne L. Precythe, Director, Missouri Department of Corrections; President, Correctional Leaders Association.

Ellen Schall, Former Commissioner, NYC Department of Juvenile Justice

Marc Schindler, Former Interim Director, Department of Youth Rehabilitation Services, Washington, D.C.

Vincent Schiraldi, Former Director, Department of Youth Rehabilitation Services, Washington, D.C.; Former Commissioner, New York City Department of Probation

Mark Steward, Director, Missouri Youth Services Institute

Wendy Still, Former Chief Probation Officer, Alameda and San Francisco Counties, California

Scott Taylor, Former Director, Multnomah County Department of Community Justice

Ray Wahl, Former Utah Deputy State Court Administrator

Kathy Waters, Former Director, Adult Probation Services, Arizona Supreme Court

September 27, 2022

1199 N. Fairfax Street
Suite 500
Alexandria, VA 22314
(202) 656-9844

Via Electronic Delivery

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Amy Solomon

Dear Chairman Durbin and Ranking Member Grassley:

My name is David Safavian, and I am the general counsel of the American Conservative Union. However, I am writing this letter regarding Amy Solomon in my personal capacity. While I disagree with President Biden on many things, he could not have made a better choice than to nominate Amy Solomon to be the Assistant Attorney General for the Office of Justice Programs.

I have known Amy for the better part of seven years. During that time, she has proven herself to be dedicated to not only the rule of law, but its fair implementation as well. Like many others on the left and right, Amy understands that our criminal justice system is imperfect. She also values using data to inform the policy-making function, rather than making decisions based on mere anecdote. Given the vast amounts of taxpayer money America spends on criminal justice, she understands that we can – indeed must – do better to improve public safety, hold individuals and government accountable, and enhance human dignity. Sin my opinion, she is the ideal person to lead the Office of Justice Programs as Assistant Attorney General.

Accordingly, I fully support Amy Solomon's nomination, and ask that you do the same.

Should you have any questions, please feel free to contact me at davidhsafavian@verizon.net or at the number listed above.

Respectfully,

David H. Safavian, Esq.

October 27, 2022

The Honorable Charles Grassley
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

First and foremost, thank you for serving Iowans in the United States Senate. I have great respect for your commitment to making Iowa a great place to live. It is my pleasure to enthusiastically support Amy Solomon for the Assistant Attorney General position.

My name is Beth Skinner. I have worked with Amy over the past 7-8 years. I worked with her through my roles as a policy advisor, Director of Reentry, Research Director, and Director of Corrections. I have worked with Amy on several projects over the years and have been thoroughly impressed with her ability to collaborate, provide leadership, and create a vision.

Amy Solomon is a leader in the field of criminal justice. She is innovative, progressive, and strategic when looking at how best to improve the field of criminal justice. I am confident Amy will excel as Assistant Attorney General and will proudly serve Americans, ensure our criminal justice systems will continue to improve, and strive for equal justice. It has been an honor to know and work with Amy and I highly recommend her for Assistant Attorney General.

Thank you for taking the time to read my letter.

Feel free to contact me at 319-594-5865 or bethskinner@yahoo.com. I am happy to answer any questions or elaborate on Amy's qualifications and achievement.

Sincerely,

Beth A. Skinner
2015 34th Street
Des Moines, Iowa 50310

Justice Center
THE COUNCIL OF STATE GOVERNMENTS

11/14/2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of The Council of State Governments (CSG) Justice Center, I write to voice our strong support for Amy Solomon's nomination as the Assistant Attorney General for the Office of Justice Programs in the United States Department of Justice.

The Council of State Governments is a nonpartisan, nonprofit organization serving all three branches of government. We combine the power of a membership association with policy and research expertise to provide strategies that increase public safety while also strengthening our communities. Our policy goals are to break the cycle of incarceration, advance health, opportunity and equity, and to use data to improve safety and justice.

Amy's deep expertise in criminal justice and public safety has been invaluable in supporting the goals of the CSG Justice Center and state leaders nationwide. She is a collaborator, working with institutions and individuals on all sides of the justice system, including law enforcement, courts, corrections, and victims organizations. Her extensive knowledge of the role of the federal government in fostering improvement in the state and local court systems makes her an important partner to our organization.

Her long-term work on addressing the over-representation of individuals with mental illness in the criminal justice system through the Justice and Mental Health Collaboration Program (JMHCP) has been pivotal to states. This program provides funding to improve public safety responses and outcomes for individuals with mental illnesses who come into contact with the criminal justice system. Amy's work has also helped us elevate nationwide best practices for reducing recidivism, supporting safe reentry, and strengthening community trust.

I appreciate the opportunity to provide this letter of support for Amy L. Solomon to serve as the Assistant Attorney General for the Office of Justice Programs. Her leadership capabilities and expertise make her an excellent choice to advocate for the improvement of the criminal justice system and the enhancement of safety for all communities.

Sincerely,

CSGJUSTICECENTER.ORG • 212-482-2320 • 22 CORTLANDT STREET, 22ND FLOOR • NEW YORK, NY 10007

Megan Quattlebaum
Director, CSG Justice Center

ADDICTION POLICY FORUM

November 16, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the Addiction Policy Forum, I am writing in support of Amy Solomon's nomination to be the next Assistant Attorney General for the Office of Justice Programs in the U.S. Department of Justice.

The Addiction Policy Forum is a nationwide nonprofit organization dedicated to eliminating addiction as a major health problem. Founded in 2015, our strategic priorities include helping patients and families in crisis, ending the stigma around addiction, expanding prevention and early intervention, increasing the uptake of evidence-based practice and advancing patient-led research.

I have worked with Amy Solomon for over 20 years on a variety of projects related to substance use disorders and criminal justice and highly recommend her for Assistant Attorney General. I have found Amy's leadership, collaboration, and willingness to seek out new innovative initiatives an important asset in advancing the field, including efforts that range from reducing recidivism to improving evidence-based services for addiction treatment. Her skill at forming interagency collaborative partnerships is an invaluable and often overlooked component of driving practical change.

Amy is an innovative and progressive leader. It has been my privilege to know her and to work with her. I am confident she will excel as Assistant Attorney General. I urge the Committee to act favorably on her nomination and to move her swiftly to confirmation. The Office of Justice, the Department of Justice and communities across the country will benefit from Amy's leadership.

I appreciate the opportunity to provide these views. You can contact me at jhulsey@addictionpolicy.org or 202-302-1147.

Sincerely,

Jessica Hulsey

Jessica Hulsey
Executive Director

American Probation and Parole Association
A Force for Positive CHANGE.
c/o The Council of State Governments | 1776 Avenue of the States | Lexington, KY 40511 | (859) 244.8001 | appa@csg.org

EXECUTIVE DIRECTOR
Veronica Cunningham
Illinois

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Nebraska

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California

October 10, 2022

The Honorable Charles E. Schumer
Majority Leader, U.S. Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader, U.S. Senate
Washington, DC 20510

The Honorable Richard J. Durbin
Chairman Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member Committee on the Judiciary
U.S. Senate
Washington, DC 20510

RE: Letter of Support: Probation and Parole Leaders for Amy L. Solomon to Serve as Asst Atty General, U.S. Department of Justice, Office of Justice Programs

Dear Senators Schumer, McConnell, Durbin and Grassley:

This letter is to express categorical support for Ms. Amy L. Solomon to serve as Assistant Attorney General for the Office of Justice Programs (OJP), U.S. Department of Justice (USDOJ). A career practitioner and administrator in community supervision (probation, parole, pretrial) and now Executive Director/CEO of the American Probation and Parole Association, I, along with staff, a 15-member Board of Directors, and 40,000 members (part of the 90,000 community supervision workforce) value the vitally important work of OJP.

That is why the appointment of Ms. Solomon is crucial. Her outstanding justice system experience and career-long commitment have yielded a steadfast focus on developing initiatives that improve the system – espousing public safety for all of us. She is highly revered as a smart, ethical thought leader who is excellent at sharing knowledge and using her insights to design strategies to expand practices that produce good outcomes for millions of system-involved youth and adults returning home as well as society as a whole.

Ms. Solomon possesses the core competencies and qualities needed to build a just and equitable system. A proven collaborator, she will lead bipartisan reentry efforts to shape a better tomorrow. She will ensure the supportive services offered by the USDOJ are geared towards justice system transformation. After all, our goal is positive outcomes—a goal that is not as elusive as we acquire more empirical information, become more adept at effective interventions, and look to great leaders like Ms. Solomon.

Thank you for your consideration of this letter of support of Amy L. Solomon to serve as the Assistant Attorney General for the Office of Justice Programs. No doubt this stellar leader and champion of change will execute her duties with dignity, morality, respect, and the intellect to advocate for a society where public safety and fairness are of the utmost importance.

Sincerely,

Veronica Cunningham
Executive Director/CEO
c/o 14 W. Superior Street #1204, Chicago, IL 60654

September 27, 2022

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Richard J. Durbin Chairman
Committee on the Judiciary, United States
Senate, Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member Committee on the
Judiciary, United States Senate
Washington, DC 2051

RE: Law Enforcement Professionals' Support for Amy L. Solomon to Serve as Assistant Attorney General, U.S. Department of Justice, Office of Justice Programs

Dear Senators Schumer, McConnell, Durbin and Grassley:

We are writing to express our strong support for Ms. Amy Solomon to serve as the Assistant Attorney General for the Office of Justice Programs (OJP) within the United States Department of Justice (USDOJ). Collectively, we have served as law enforcement leaders, current and former prosecutors, former judges, and former Justice Department officials.

All of us are familiar with Ms. Solomon's vast experience and skillset over her 30-year public service career, and many of us have worked directly with her during that time period. Ms. Solomon is a dedicated public servant, who is committed to advancing public safety, safely reducing overreliance on incarceration, and supporting professionals like us, who have similarly dedicated our careers to making our communities safer and more just.

The Office of Justice Programs is the primary grantmaking entity within the USDOJ, supporting crime-fighting efforts and best practices at the state, local, and Tribal levels. Our communities need the support of OJP in making funding available and best practices accessible, in order to implement proven and innovative strategies that keep our communities safe and reduce unnecessary incarceration. This is Ms. Solomon's third time working at OJP, equipping her with a deep understanding of the Federal government's ability and opportunities to support our local communities' law enforcement and criminal justice professionals.

Ms. Solomon has proven herself to be a collaborative and thoughtful partner, who engages local police chiefs and prosecutors, as well as national law enforcement organizations, victims/survivors, and other justice system stakeholders. Throughout her career, she has been a leader in bipartisan reentry efforts to help people safely and successfully return to their home communities following a period of incarceration.

Without reservation, we support Ms. Solomon's expeditious confirmation for this essential role. We know that Ms. Solomon will execute her duties as OJP's Assistant Attorney General with honor and integrity, and that our communities will be safer, more just, and better supported because of her leadership.

We appreciate your consideration of our letter of support for Amy Solomon to serve as the Assistant Attorney General for the Office of Justice Programs.

Sincerely,

Art Acevedo
Former Police Chief, Miami, Florida
Former Police Chief, Houston, Texas
Former Police Chief, Austin, Texas
Former President, Major Cities Chiefs Association

Hassan Aden
Federal Consent Decree Monitor, Cleveland

Eric Atkinson
Police Chief, Menomonie Police Department, Wisconsin

Diana Becton
District Attorney, Contra Costa County, California

Carmen Best
Former Police Chief, Seattle, Washington

Shay Bilchik
Director Emeritus, Center for Juvenile Justice Reform, McCourt School of Public Policy, Georgetown University
Former Associate Deputy Attorney General, U.S. Department of Justice
Former Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice
Former Chief Assistant State Attorney, Miami-Dade County, Florida

Larry Boone
Former Chief, Norfolk Police Department, Virginia

William Bratton
Former Police Commissioner, New York, New York
Former Police Chief, Los Angeles, California

Jim Bueermann
Former Police Chief, Redlands, California
President and Chief Futurist, Future Policing Strategies

Zachary Carter
Former U.S. Attorney, Eastern District of New York (1993-1999)

John J. Choi
County Attorney, Ramsey County, Minnesota

Dwayne Crawford
Executive Director, National Organization of Black Law Enforcement Executives (NOBLE)

Brandon del Pozo
Former Chief, Burlington Police Department, Vermont

Edward L. Dowd
Former U.S. Attorney, Eastern District of Missouri (1993-1999)

John Drake
Chief of Police, Nashville, Tennessee

Dean M. Esserman
Senior Counselor, Police Foundation
Former Police Chief, New Haven, Connecticut

Gil Garcetti
Former District Attorney, Los Angeles County, California

Diane Goldstein
Executive Director, Law Enforcement Action Partnership (LEAP)
Former Lieutenant, Redondo Beach Police Department, California

Barry Grissom
Former U.S. Attorney, District of Kansas

Ronald Hampton
Former Executive Director, National Black Police Association

Janeé Harteau
Former Police Chief, Minneapolis, Minnesota

Walter Holton
Former U.S. Attorney, Middle District of North Carolina

Paul H. Fitzgerald
Sheriff, Story County, Iowa
Former President, National Sheriffs' Association (2011-2012)

Lisa Foster
Former Director, Office for Access to Justice, U.S. Department of Justice
Former Judge, Superior Court of California

John Hummel
District Attorney, Deschutes County, Oregon

Gil Kerlikowske
Former Commissioner, U.S. Customs and Border Protection
Former Director, Office of National Drug Control Policy
Former Police Chief, Seattle, Washington
Former Police Commissioner, Buffalo, New York

Justin F. Kollar
Former Prosecuting Attorney, County of Kaua'i, Hawaii

Peter Koutoujian
Sheriff, Middlesex County, Massachusetts
Former President, Major County Sheriffs of America
Former President, Massachusetts Sheriffs' Association

Miriam Aroni Krinsky
Former Assistant U.S. Attorney, Criminal Appellate Chief, and General Crimes Chief, U.S. Attorney's Office for the Central District of California
Former Chair, Solicitor General's Advisory Group on Appellate Issues

David LaBahn
President and CEO, Association of Prosecuting Attorneys

Chris Magnus
Commissioner, U.S. Customs and Border Protection

Beth McCann
District Attorney, Denver, Colorado

Garry L. McFadden
Sheriff, Mecklenburg County (Charlotte), North Carolina

Cameron McLay
Former Police Chief, Pittsburgh, Pennsylvania

Barbara McQuade
Former U.S. Attorney, Eastern District of Michigan

Steven O'Donnell
Former Superintendent, Rhode Island State Police
Former Commissioner, Rhode Island Department of Public Safety

Kathleen O'Toole
Former Commissioner, Boston Police Department, Massachusetts
Former Chief, Seattle Police Department, Washington
Former Secretary of Public Safety, Massachusetts

Melba Pearson
President, National Black Prosecutors Foundation

Richard Pocker
Former U.S. Attorney, District of Nevada (1989-1990)

Timothy Purdon
Former U.S. Attorney, District of North Dakota

Rick Raemisch
Former Executive Director, Colorado Department of Corrections
Former Sheriff, Dane County, Wisconsin

Charles Ramsey
Former Police Commissioner, Philadelphia, Pennsylvania

Gary Raney
Former Sheriff, Ada County, Idaho
Director of Compliance, Miami-Dade County, Florida

Jill Ravitch
District Attorney, Sonoma County, California

Troy Rawlings
County Attorney, Davis County, Utah

Ira Reiner
Former District Attorney, Los Angeles, California
Former City Attorney, Los Angeles, California

Vincent Schiraldi
Former Commissioner, Department of Probation, New York City, New York
Former Commissioner, Department of Correction, New York City, New York
Former Director, Department of Youth Rehabilitation Services, Washington D.C.

Paul P. Schnell
Commissioner, Department of Corrections, Minnesota

Ronal W. Serpas
Executive Director, Law Enforcement Leaders to Reduce Crime & Incarceration
Former Police Superintendent, New Orleans, Louisiana, Retired
Former Police Chief, Nashville, Tennessee
Former Police Chief, State Patrol, Washington

Sean Smoot
Director and Chief Legal Counsel, PB and PA of Illinois
Area Vice President, NAPO

David Steingraber
Former Police Chief, Menomonee Falls, Wisconsin

Darrel Stephens
Former Executive Director, Major City Chiefs Association
Former Chief, Charlotte-Mecklenburg Police Department, North Carolina

Donald Stern
Former U.S. Attorney, District of Massachusetts (1993-2001)

Gregory A. Thomas
Senior Executive for Law Enforcement Operations, Office of the District Attorney
Kings County, New York
Former President, National Organization of Black Law Enforcement Executives

Brett Tolman
Former U.S. Attorney, District of Utah

Joyce Vance
Former U.S. Attorney, Northern District of Alabama

Bernard Warner
President, The Moss Group
Former Secretary, Department of Corrections, Washington, Retired

Ronald Weich
Former Assistant District Attorney, New York County, New York
Former Special Counsel, United States Sentencing Commission
Former Assistant Attorney General, U.S. Department of Justice

John E. Wetzel
Former Secretary of Corrections, Department of Corrections, Pennsylvania

Thomas B. Wine
Commonwealth's Attorney, Jefferson County, Kentucky

Organizations
Law Enforcement Action Partnership (LEAP)

Michael D. Thompson
6669 32nd Place, NW
Washington, DC 20015

August 17, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

I am writing in support of Amy Solomon's nomination to be the next Assistant Attorney General for the Office of Justice Programs in the US Department of Justice.

I have known, and worked closely with, Amy for nearly 25 years. As the founder and head of the Justice Center at the Council of State Governments, a membership association serving all state leaders in the three branches of government, I partnered with Amy when she was employed by the Office of Justice Programs under multiple administrations and when she worked for the Urban Institute. In addition, while I was a senior vice president with the Pew Charitable Trusts and she was a top official at Arnold Ventures, our organizations collaborated closely on important initiatives.

I made it a priority to work with Amy whenever possible because of her deep expertise on criminal justice policy. Whether on the subject of programs that reduce recidivism, effective approaches to community supervision, or efforts to improve court-based decisions about pretrial release, Amy stays on top of the latest research, eagerly solicits new analyses to understand trends in the field and generate new insights, and insists findings be packaged and communicated in ways that make this information accessible and actionable for the field.

Amy has always been highly regarded among leaders in law enforcement, courts, corrections, and victim services because of her deep understanding of the role that local and state governments have in setting and implementing criminal justice policy. From a variety of perches in the federal government and philanthropy, Amy designed, implemented, and oversaw grant programs on topics ranging from prison reentry to violence reduction. In so doing, she demonstrated a keen appreciation that no two states are alike and the role of the federal government is to foster state and local innovation, not to impose one-size-fits-all mandates.

When my new job at Pew made it necessary for my wife and children and me to relocate from New Jersey to Washington, DC five years ago, I also saw first-hand that Amy and her husband, Dr. Michael Solomon, were active in the public elementary, middle, and high schools that our children shared. And, much in the same way people across the US in government and advocacy genuinely enjoyed being around Amy and her contagious devotion to public service, so did her neighbors appreciate her commitment to family and the community.

In sum, I cannot think of anyone better qualified or better suited for the position to which Amy Solomon has been nominated. I welcome any opportunity to discuss further my endorsement of her nomination (mike@mikethompsonconsulting.net / 917.930.8753).

Sincerely yours,

Michael D. Thompson

POLICE EXECUTIVE
RESEARCH FORUM

Chuck Wexler
Executive Director

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

September 21, 2022

Dear Senators Durbin and Grassley:

I am writing to express my enthusiastic support for Amy Solomon's nomination as Assistant Attorney General for the Office of Justice Programs (OJP).

Amy is ideally suited to the position due to her extensive experience both inside and outside government in criminal justice, research, and implementing cutting edge programs. Currently, as Principal Deputy Assistant Attorney General at OJP, she leads the Justice Department's principal funding, research, and statistical component, overseeing grants and other resources to support state, local, and tribal criminal and juvenile justice activities and victim service programs.

Previously, as Vice President of Criminal Justice at the philanthropy Arnold Ventures, Amy launched portfolios on corrections reform and expanding economic opportunity for justice-impacted populations. In the Obama Administration she served as director of policy for OJP and as senior advisor to OJP's Assistant Attorney General, where she helped create and implement policy initiatives dealing with criminal justice reform, urban policy, and building trust between the justice system and communities of color. Amy also worked at the Urban Institute, directing projects on prisoner reentry and public safety, among other positions.

I have known Amy for some time; she is highly regarded in the field and her nomination has been received with considerable enthusiasm. She well deserves Senate confirmation.

Thank you for your consideration.

Sincerely,

Chuck Wexler
Executive Director

WE PROVIDE PROGRESS IN POLICING

1120 Connecticut Ave., NW Suite 930 Washington, D.C. 20036
Tel: 202-466-7820 Fax: 202-466-7826 www.PoliceForum.org perf@policeforum.org

November 24, 2002

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin, Senator Grassley, and members of the Committee on the Judiciary:

I am honored to submit to you a letter of unqualified support for Amy Solomon for the position of Associate Attorney General at the Office of Justice Programs. Amy Solomon has dedicated her career to bettering the criminal justice system and all those the system touches. She demonstrates a deep commitment to science and research to inform operations as well as policy. Ms. Solomon is among the most genuine, kind, and trustworthy people I've experienced across my four decades working in criminal justice.

I first met Ms. Solomon nearly 30 years ago when she was a graduate student at the Harvard Kennedy School and I was *de facto* chief of staff at the Lowell (MA) Police Department. To the Lowell Police Safety First Project as her client for her master's thesis, she brought a blend of policy and data savvy that created the foundation for our community crime prevention and response strategies at a time when relying on data in policing was an emerging idea. Ms. Solomon continues to be on the cutting edge of innovation and policy and brings those innovations forward in each of her professional positions. Because of her reputation, Ms. Solomon was selected as one of only 30 professionals for a seat on the Harvard Kennedy School's Executive Session on Community Corrections. This convening spawned dozens of thought pieces related to reentry services.

At her core, Ms. Solomon is about getting the right thing done and making a difference in criminal justice. That focus on important and just accomplishments is fundamental to her as a manager -- a leader of people -- as much as in her thinking around policy. Her career is noteworthy for her efforts to improve the experiences of justice system stakeholders whether they be police executives, people who are incarcerated, corrections professionals, or the community at large that is impacted deeply by policy decisions around crime, safety, and justice.

Our careers have intersected repeatedly over those 30 years since our first encounter, and I remain honored to know Ms. Solomon and be influenced by her work. I wholeheartedly support her candidacy for this position. As a career criminal justice professional who has worked in victim services, prosecution, policing, and policy at a state agency, a research agency, and a nonprofit, I can think of no one better positioned and experienced for this role than Amy Solomon.

Very truly yours,

Christine M. Cole

November 28, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Amy Solomon for Assistant Attorney General to lead Department of Justice Office of Justice Programs

Dear Chairman Durbin and Senator Grassley,

As a police Commissioner in cities such as Lowell and Boston, I have worked closely with Amy Solomon frequently over the year and highly recommend her for the role of Assistant Attorney General to the Office of Justice Programs.

The first time I was introduced to Amy was while I was Chief of Police in Lowell. As a researcher from Harvard Kennedy School of Government, Amy came in to lead a research initiative to better our policing models. During the time, the idea of community policing had just begun its development in our community and Amy's research help launch the Lowell Police Department to the forefront of national policing models, recognized by the Department of Justice. Amy introduced the Department's aggregate data that had never really been looked at in a digestible and relevant format. She and her research partner did an incredible job of leading us to implement evidence-based practices which I have carried through all my police leadership roles. I have long considered Amy and her research team the cornerstone of our community policing development.

Since our time together in Lowell, I have had the opportunity to watch Amy's career blossom. Amy's mix of pragmatic solutions and community-based philosophy to lower crime and protect communities has remained at the foundation. Amy's career progression and public rapport speaks for itself. With degrees from University of Michigan and Harvard, Amy could have had her pick in professional direction, but she chose to start at the roots of community building and the intersection of evidence-based policing.

Amy has always been one step ahead of the future of criminal justice and policing. Her innovative approach has led her to consistently increase safety in our communities in a catalyzing manner which others would soon designate as the industry standard. Amy continues to broaden her scope as she has progressed through her career and the nation deserves her impact. I am delighted in Amy's appointment as Assistant Attorney General and look forward to her influence on Criminal Justice in the United States.

Sincerely,

Edward F. Davis, CEO
The Edward Davis Company