

S. HRG. 118–29, Part 7

# CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

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## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

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JULY 12, 2023

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**Serial No. J–118–2**

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**PART 7**

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## **CONFIRMATION HEARING ON FEDERAL APPOINTMENTS**

**WEDNESDAY, JULY 12, 2023**

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

The Committee met, pursuant to notice, at 10:04 a.m., in Room 226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Blumenthal, Hirono, Booker, Padilla, Ossoff, Graham, Lee, Hawley, Kennedy, Tillis, and Blackburn.

Also present: Senators Brown, Cardin, Van Hollen, Cassidy, and Vance.

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

Chair DURBIN. This meeting of the Senate Judiciary Committee will come to order.

Today, we will consider four nominees: Jerry Edwards, Jr., nominated to the U.S. District Court for the Western District of Louisiana; Brandon Long, nominated to the U.S. District Court for the Eastern District of Louisiana; Judge Matthew Maddox, nominated to the U.S. District Court for the District of Maryland; and Philip Hadji, nominated to the U.S. Court of Federal Claims.

Congratulations to all the nominees, and their families.

There are a few Senators joining us today for introductions, but I would like to make a note about today's panel. I understand the Congressional Black Caucus has raised concerns about White House consultations with Congressman Troy Carter regarding the two Louisiana nominees on today's panel. I do not know the details of these consultations, but I hope that any concerns can be resolved as we move forward.

Congressman Carter is the only Black Member of the congressional delegation in a State whose population is more than 30 percent African American, and where people of color have been historically underrepresented. I understand why he feels that the White House should consider his views and the views of his constituents regarding lifetime appointments to the Federal courts.

I also know that the Louisiana Senators have, over the last several months, answered my invitation, and challenge, to work in good faith with the White House on judicial and executive nominees. I value their partnership and appreciate the bipartisan cooperation that has produced the two nominees on today's panel.

Notably, one of the nominees on today's panel will be the first person of color to serve on the Federal bench in the Western District of Louisiana. It is important to recognize this important historic milestone, as well as the accomplishments and professional experience of all of today's nominees. I hope these exemplary qualifications will be the focus of today's hearing.

I now want to turn to Ranking Member Graham for opening remarks.

**OPENING STATEMENT OF HON. LINDSEY O. GRAHAM,  
A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA**

Senator GRAHAM. Thank you, Mr. Chairman.

I want to applaud my colleagues from Louisiana, finding a way to move forward. Elections do have consequences, and I think people on our side of the aisle have been trying to work with the White House, particularly at the district court level, to get people that we can find consensus on, and that is sort of the way the system works. And, we will continue along those roads, down those roads.

A couple of matters, and I will not take long. I wrote a letter to Mr. Weiss about—the U.S. Attorney handling the Biden investigation in Delaware, about some of the accusations made about whistleblowers, about Mr. Weiss being denied the ability to become a Special Counsel. In my letter, I think he said no. I need a better answer, a more clear one that he did not seek Special Counsel status, was not denied.

In the letter, he seems to indicate that he was not rebuffed, by DC or California U.S. Attorneys, to bring more serious charges. But, again, I think we need more clarity there.

But, this is one area that was a complete blow-off. The 1023 allegations that we talked about pretty extensively that Senator Grassley, to his credit, discovered, came from whistleblowers telling Senator Grassley that there was an investigative form called the 1023 that had allegations coming from a paid informant the FBI considered to be reliable, along the lines that a Burisma senior official—a gas company in Ukraine—apparently said that he had tape recordings of conversations between him, Hunter Biden, and, at the time, former Vice President Biden, which would run completely contrary to what President Biden has said.

I don't know if those allegations are true, but, here's what I do know: That the U.S. Attorney involved in the clearinghouse endeavors, the Attorney General Barr said, he had a system that when allegations were made, he sent them to a U.S. Attorney, I think, in Pennsylvania, Mr. Brady, to look and see if they were worthy of consideration by Mr. Weiss.

One thing I do know is that those allegations contained in the 1023 went through that system, and the information was forwarded to Mr. Weiss. A briefing was provided by FBI agents, and others, regarding the extent of the allegations contained in the 1023, and that is where the trail ends.

In the letter back to me, Mr. Weiss said he could not comment on the handling of the 1023 allegations because of an ongoing criminal investigation. That means one of three things: that they are still looking at those allegations, and may bring about additional charges beyond what we are reading about in the paper; they



have looked at the allegations and disposed of them; or, they never looked at all.

What I want to know is the answer to the question, "What did you do with the allegations?" I think the ongoing criminal investigation is about to be ended with a plea deal, it appears. And, I can promise you, Mr. Chairman, the trust level on this side is incredibly low, and we have accusations of thumbs on the scale during the course of this investigation of Mr. Biden. And, one of the allegations on the 1023, if accurate, shows interaction contrary to every public statement being made.

And again, it may be just rumor and innuendo, but, we need to find out what happened on Mr. Weiss' watch regarding the allegations contained in the 1023, discovered by Senator Grassley that came from a whistleblower. And, I need a more direct answer, from him, on: "Were you ever denied Special Counsel status?" "Was there anybody there, in DOJ, dissuading you from seeking more serious charges in other venues?"

So, I just want to let you know, Mr. Chairman, the letter did not answer my questions. It created more questions. Thank you.

Chair DURBIN. Thank you, Senator Graham.

Of course, the President made the decision that the attorney who would investigate his own son would be the Trump appointee in the State of Delaware and that the administration would take a hands-off attitude toward that investigation. Nothing has been disclosed, to my knowledge, that contradicts that goal, nor the result that followed.

It is up to individual Senators to ask questions if they wish. We are going to focus on that issue if it comes before us, but, we have other business today, which is of great importance.

Senator GRAHAM. And, I don't want to delay the Committee any longer, but, your statement about there is nothing to suggest that this was done, anything above—being above board, there is plenty of suggestions. I think there are six whistleblowers, I can't remember—two, I know of—that suggest that this thing was not handled in the normal course of business. In that regard, we will keep asking questions. Thank you.

Chair DURBIN. It is true that it was not handled in an ordinary course because the President of the United States allowed the U.S. Attorney in Delaware, a Trump appointee, to continue the investigation of his son, and much of the evidence that we are discussing has, at one point, been in the hands of then-Attorney General Bill Barr working for President Trump, or even the President's personal counsel, Rudolph Giuliani. So, there is a lot more to the story than—

Senator GRAHAM. Well, let's just—let's—okay, so, what happened to the 1023? Do you know? Was it looked at? Was it investigated? What did they find? Who did they talk to?

Chair DURBIN. I—

Senator GRAHAM. If you know about that, please share it with me. Thank you.

Chair DURBIN [continuing]. I would give you any information that I have on the subject, and I will continue to.

We have colleagues who are coming today to speak to the nominees. Senator Brown of Ohio, I am taking you out of order because I understand you have a scheduling conflict, and I——

Senator BROWN. Thank you,

Chair DURBIN [continuing]. Will then go back to the regular order.

Senator BROWN. Thank you, Mr. Chair, as I know all four of us have scheduling conflicts. That is the way it works, but, thank you.

**STATEMENT OF HON. SHERROD BROWN, A U.S. SENATOR  
FROM THE STATE OF OHIO, INTRODUCING PHILIP S. HADJI,  
TO BE A JUDGE OF THE UNITED STATES COURT OF FED-  
ERAL CLAIMS**

Senator BROWN. Chair Durbin, Ranking Member Graham, colleagues on the Committee here, it is my honor to introduce Phil Hadji, a highly qualified nominee, to serve on the Court of Federal Claims. He is a proud son of Ohio. He was born and raised in Cleveland.

After serving as a Senate staffer, he returned home and earned his law degree at Case Western Reserve University Law School where two things happened: He received recognition for his scholarship and leadership, and he met his future wife, who is a really important staff person for my friend Senator Cassidy.

His life of service was only getting started. He spent over a decade with the U.S. Navy, handling complex legal matters with distinction, from contract disputes, to fraud investigations, to awarding major contracts. The General Counsel of the Navy called Mr. Hadji an exemplary advocate, and described Mr. Hadji's work as encompassing, quote, "the most complex, high-profile, and sensitive acquisition integrity matters facing the Navy."

His service to the Navy has drawn praise and recognition. He has been awarded both the Navy's Superior Civilian Service Award and the Navy's Meritorious Civilian Service Award. His exemplary record in service to the country is why Senator Portman, Senator Vance's predecessor, and I, were proud to come together to recommend his nomination in the previous Congress to the Court of Federal Claims.

He brings not only his impressive credentials, but also, an unwavering dedication to fairness, and respect for others. It is why over 40 of his colleagues wrote a letter in support of his nomination. It is also why his former law school dean and U.S. district court judge spoke not only of Mr. Hadji's intellect, but also, of his ethics, and his moral character, and his sound temperament. It will serve him well in this role.

Mr. Hadji, we know your family, and the whole State of Ohio, are proud of the work you have done, and grateful for it. Several family members have accompanied him here. He will obviously introduce them.

We look forward to your continuing to serve this country with distinction as a judge in the Court of Federal Claims.

Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Brown. Now Senator Cardin to introduce Judge Maddox.

**STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR  
FROM THE STATE OF MARYLAND, INTRODUCING HON. MATTHEW JAMES MADDOX, TO BE UNITED STATES DISTRICT  
JUDGE FOR THE DISTRICT OF MARYLAND**

Senator CARDIN. Thank you, Chairman Durbin, Ranking Member Graham, Senator Kennedy, Members of the Committee. Thank you.

Senator Van Hollen, and I, thank you very much for scheduling this hearing for Judge Matthew Maddox, President Biden's nominee to fill the district court vacancy in the State of Maryland.

Senator Van Hollen, and I, have a process in which we use a nonpartisan committee to interview anyone who is interested in serving on our district courts. They then tier the nominees, and the top tiers are interviewed by Senator Van Hollen and myself. And, we are proud to recommend to this Committee, as we did to President Biden, the confirmation of Judge Maddox to fill this vacancy.

Judge Maddox was born and raised in Maryland. He graduated summa cum laude from Morgan State University in Baltimore in 1999, where he majored in philosophy and religious studies, and minored in psychology. I think that is an interesting combination for the courts.

After receiving his B.A. degree, Judge Maddox was a Fulbright Scholar and taught high school through the Teach For America program. Judge Maddox received his J.D. degree from the Yale Law School in 2011. After working in private practice and serving in two judicial clerkships, in 2015, Judge Maddox was appointed as an Assistant U.S. State's Attorney in the District of Maryland. In this capacity, Judge Maddox prosecuted a range of criminal cases and conducted trainings for law enforcement on the topics of human trafficking and identity theft.

In 2020, Judge Maddox was selected to serve as the Deputy Chief of the Major Crimes Section in the Northern Division of the United States Attorney's Office. He has quite a bit of experience.

In February 2022, Judge Maddox was sworn in as United States magistrate judge and sits in Baltimore. He now presides over both preliminary criminal proceedings and civil lawsuits. He, therefore, also brings a remarkable experience to this position, having served as a Federal prosecutor for nearly a decade, and now having served as a magistrate judge for over a year.

If confirmed, he would continue to serve on the same court where he now sits as a magistrate judge, and where he has practiced as an Assistant U.S. Attorney for many years.

Senator Van Hollen, and I, believe that Mr. Maddox meets the highest standards of integrity, competence, and temperament. I am confident that Judge Maddox will safeguard the rights of all Marylanders and uphold the Constitution, rule of law, and faithfully follow the judicial oath to do equal rights to the poor, and to the rich.

Mr. Chairman, Judge Maddox has devoted his entire life to public service, from his start with Teach For America, to now, being a magistrate judge. I want to acknowledge that those who give this type of service, it is a family commitment. I want to thank his wife, and son, for sharing Judge Maddox with all of us in public service, and I urge his confirmation, recommend favorable action by this Committee.

Chair DURBIN. Thanks, Senator Cardin. Senator Van Hollen.

**STATEMENT OF HON. CHRIS VAN HOLLEN, A U.S. SENATOR  
FROM THE STATE OF MARYLAND, INTRODUCING HON. MAT-  
THEW JAMES MADDOX, TO BE UNITED STATES DISTRICT  
JUDGE FOR THE DISTRICT OF MARYLAND**

Senator VAN HOLLEN. Thank you, Chairman Durbin, Ranking Member Graham, Members of the Committee, for the chance to say a few words in support of the nomination of Magistrate Judge Matthew Maddox, to be a U.S. district court judge for Maryland.

Senator Cardin has, as always, covered his background, and résumé, well. I just want to add a few more thoughts. Because when we had a chance to talk to Magistrate Judge Maddox about some of his life-forming experiences, he, of course, talked about his service in the various capacities that Senator Cardin mentioned.

But, he started by his service down in Arkansas, and, along with his wife, Nicole, who he credited with making sure that they remained connected and involved in the communities wherever they were.

And, it was 22 years ago, right after their wedding, Judge Maddox and Nicole—and, I want to welcome her, and their son, Mosiah. Judge Maddox and Nicole enjoyed what he called a, quote, “two-year honeymoon,” teaching at public schools in rural Arkansas.

The important work of serving students in the Arkansas Delta required every ounce of their youthful energy and creativity, especially, because, as you heard, Judge Maddox was a philosophy major, and he was teaching math in high school. They overcame their challenges, more and more. They served their students well, including through their mutual support for one another.

Judge Maddox says that, quote, “sharing that demanding and fulfilling experience of public service, at the very outset of their marriage,” set them on the path that now brings them before the Committee with the nomination as district court judge.

Members of the Committee, there is no doubt that Magistrate Judge Maddox has the record, and résumé, to do the job. I think this story also reflects his commitment to public service. And, I thought, it was also especially telling, that when asked if there was a story about his career he would like to share with the Committee, he told us it was one about his love for his wife, and their shared commitment to service to our country.

I urge Members of the Committee to support this important nomination.

Chair DURBIN. Thanks, Senator Van Hollen. Of course, Senator Cardin. Thank you, both, for being here before the Committee. I know your schedules are busy. You may have to leave, but your testimonies are very important to us.

Next, Senator Kennedy. Do you want to go with Senator Cassidy? Senator Cassidy.

Senator CASSIDY. I have three people to introduce. So, I will briefly do all three.

**STATEMENT OF HON. BILL CASSIDY, A U.S. SENATOR FROM THE STATE OF LOUISIANA, INTRODUCING JERRY EDWARDS, JR., TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF LOUISIANA; BRANDON S. LONG, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA; AND PHILIP S. HADJI, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS**

Senator CASSIDY. Mr. Chair, Mr. Ranking Member, it is an honor to introduce Jerry Edwards, Jr., to the Committee today, and to recommend him for a seat on the Western District of Louisiana. I also welcome his mother, Ramona Williams, his stepfather, Kollister Williams, who are joining him.

Mr. Edwards is an accomplished lawyer, a Louisiana native, and currently serves as the First Assistant U.S. Attorney for Louisiana's Western District. He spent the majority of his career as an accomplished civil litigator and as an associate and partner with Blanchard, Walker, O'Quin, and Roberts, leaving to join the U.S. Attorney's Office Civil Division in 2019.

Mr. Edwards told me that since he was invested in serving his community in his spare time, he might as well do it full time. In his role as First Assistant U.S. State Attorney, he has expanded the scope of his work to overseeing some of the most serious Federal criminal matters, in addition to civil and administrative cases. In total, Mr. Edwards' practice has been 95 percent litigation, mostly in the Western District of Louisiana.

Mr. Edwards' commitment to his community and bar is a personal credit to the character required to be a successful judge. He has been a member of the Louisiana Committee on Bar Admissions since 2019, serving on its character and fitness panel.

In addition, Mr. Edwards is the chairman of the board of the Community Foundation of North Louisiana, a philanthropic community development organization. He remains involved in various leadership roles with Volunteers of America, serving adults with mental illness, low-income families, orphans, veterans, the homeless, and more.

Suffice it to say, that Mr. Edwards has one of the most profound and thoughtful community service backgrounds that we have seen in a judicial nominee. I look forward to his approval by this panel and the entire Senate.

Thank you, Mr. Chairman, and Ranking Member. With that, I yield.

Next, I would like to go to Mr. Brandon Long.

And, keep in mind, Mr. Chairman, I got three today. So, when I say, "I yield," I mean, I yield on that one, not on all three.

Chair DUBIN. Sure.

Senator CASSIDY. It is also a privilege to introduce New Orleans native Brandon Long, to the Committee today, to be a judge on the Eastern District of Louisiana. He is here with his wife of 11 years, Elizabeth; his two sons, ages 9 and 7; his mother, Bobbi; sister, Gina; and in-laws, Sam, Nancy, and Alex.

Mr. Long's career is a model of what a good Federal judge should have as a career. Mr. Long practiced at King and Spalding's DC office for 5 years in their special matters and government investigations practice.

He has a stellar academic and professional background, and with that, he could have stayed in a more lucrative attorney position. Instead, he chose public service, choosing to work to make things better, as a public service in his hometown of New Orleans.

As a Federal prosecutor, he has tried a noteworthy 32 criminal cases to verdict. He also currently serves as a member of the Financial Crimes Unit, and served 3 years as an opioid coordinator in the Eastern District.

His hometown community recognized him when the New Orleans Metropolitan Crime Commission awarded Mr. Long their Excellence in Law Enforcement Award. He continues to serve the community as a boardmember for Boys Hope Girls Hope of New Orleans, an organization that helps academically motivated middle and high school students rise above disadvantaged backgrounds. The organization runs two group homes for children and provides academic scholarships and tutoring. Mr. Long also serves as a high school mock trial coach.

Considering his experience, commitment to the community, and knowledge of the law, Mr. Long has a lifetime of demonstrating the values and traits that qualify him to be an exceptional Federal judge. I look forward to seeing him confirmed.

Thank you, Mr. Chairman, and Ranking Member. With that, I go to my third.

It is an honor to introduce Philip Hadji, which Senator Brown also introduced, but, I have a personal connection to Philip. I recommend him for an appointment to the U.S. Court of Federal Claims.

He is an accomplished Navy attorney who will be an excellent Federal judge. I also welcome his family here to support him: his father, Serge; his mother, Yanna; his brothers, Alexios and Andreas; and his wife, Katie. As you might guess, Mr. Hadji's roots are in Greece.

He received his B.A. from Hamilton College, where he was president of his class. He received his J.D. from Case Western Reserve, where he served as editor-in-chief of the Journal of International Law. He received his LL.M. in Government procurement law from George Washington University, where his thesis won a public contract law writing award from the American Bar Association.

For over a decade, he held several positions with the Naval Office of the General Counsel, his practice focusing on Government contract law matters, a large category of cases on the Court of Federal Claims docket. Mr. Hadji has worked on a variety of litigation, including Government contract claims, bid protests, and False Claims Act litigation. He also worked on contract awards and performance issues, in support of the warfighter.

Notably, he successfully litigated a bid protest of the Navy's \$7 billion next-generation global IT network services contract. He supervised a team of attorneys responsible for supporting the Suspending and Debarring Official of the Navy, who bans non-responsible contractors from doing business with the Government.

His work has been recognized by the General Counsel of the Navy through the Navy Superior Civilian Service Award in 2021, and the Navy Meritorious Civilian Service Award in 2020.

I will note that Mr. Hadji would be the only judge on the court to have served as an attorney at the Department of Defense and the only judge with an LL.M. degree in Government procurement law. He is recommended for the position on a bipartisan basis by his home State Senators, Senator Brown, and former Senator Portman.

I am confident that his experience, temperament, and judgment will make him an excellent judge. I look forward to his approval.

And with that, Mr. Chairman, I truly yield. Thank you.

Chair DUBIN. Thank you, Senator Cassidy. And, it is such a big Louisiana day in this Committee. I am sure that you, and Senator Kennedy, will be bringing a box of beignets around for all of us, at some point later.

[Laughter.]

Chair DUBIN. Senator Kennedy.

**OPENING STATEMENT OF HON. JOHN KENNEDY, A U.S. SENATOR FROM THE STATE OF LOUISIANA, INTRODUCING JERRY EDWARDS, JR., TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF LOUISIANA, AND BRANDON S. LONG, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA**

Senator KENNEDY. Thank you, Mr. Chairman. The White House Counsel's office, as we all know, is the part of the White House that is charged with advancing a President's nominees to the Federal judiciary.

Every President in recent memory has had a White House Counsel's office. And, all White House Counsel offices do their job. They try to—they think they are right, and they try to get what their boss wants. And, of course, all Senators think they are right, and we try to get what we want.

It took—I think this is true of all White House Counsel's offices. It took a while for President Biden's White House Counsel's office, and I, to get to know each other. But, we have. Now I am not suggesting that we are ready to go to summer camp together, and it could all fall apart tomorrow, but we have had a number of vacancies on the Federal judiciary in Louisiana. We need to fill them. Working with White House Counsel's office, and my quarterback, Senator Cassidy, we filled two of them.

Today, we have two additional, splendid nominees, to offer up to you. I returned a blue slip on both of them, and, unless they really, really, really screw up today—

[Laughter.]

Senator KENNEDY [continuing]. Which I do not think they will—I am going to vote for them.

Senator Cassidy covered Jerry's and Brandon's résumés. Look, I am not going to repeat everything. But, if you look at these two gentlemen and are not impressed, as Lindsey Graham says, you shouldn't be driving.

Mr. Edwards graduated from Georgia State University, Vermont Law School, he's clerked for two district court judges in Louisiana—one Republican, one Democrat. He spent 13 years at Blanchard Walker, a hell of a law firm. He was a partner there.

He has been the Chief of the Civil Division in the U.S. Attorney's Office in the Western District. He has been rated unanimously "well qualified" by the ABA.

Brandon Long, Mr. Long, is, he's from New Orleans—actually Metairie. He went to the University of Texas. He graduated cum laude from Duke Law School. He spent 5 years at King and Spalding, was earning a great living. Decided to get into Government service. We appreciate that.

He has been a Federal criminal prosecutor in both DC and the Eastern District of Louisiana. He has tried 32 cases to verdict. I think Mr. Edwards has tried a bunch of cases to verdict, as well.

He was FBI Director Wray's Deputy Chief of Staff for a while. And, he is eminently qualified.

I have gotten to know both of these gentlemen. Each of them is smart. Each of them is principled. Each of them has thought about the world, and they have formed opinions about the world. But, I am convinced that they will limit their decisions to the law, and to the facts of a specific case.

Each understands the role of our Madisonian system of checks and balances, and separation of powers. And, each of them understands the importance, and the nuances, and the limitations, of the law. And, I am really glad we could get this all worked out, and my work here is done.

Chair DURBIN. Thanks, Senator. Senator Vance.

**STATEMENT OF HON. J.D. VANCE, A U.S. SENATOR FROM THE STATE OF OHIO, INTRODUCING PHILIP S. HADJI, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS**

Senator VANCE. Thank you, Mr. Chair, and thanks to the Ranking Member, and the Members of the Committee, for having me. It is a little weird to be on this side of the rodeo, here. But, I am here to testify on behalf of Phil Hadji, and to support his nomination to the Court of Federal Claims.

Phil is a native Ohioan, born and raised in the Cleveland area, and would make a fine addition to the Federal bench. His long career in public service, including many years at the U.S. Navy's Office of General Counsel, has allowed him to develop an expertise in Federal contracting and Federal claims, exactly the expertise he will need if confirmed as a judge to the CFC.

After graduating cum laude from Hamilton College in upstate New York, Phil worked for Senator Robert Byrd, of West Virginia, before returning home to Ohio, for law school at Case Western. Philip later continued his legal education at George Washington University Law School, where he received advanced degrees.

Now, since 2011, Phil has worked at the Navy's Office of General Counsel, where he has applied the skills honed at Case Western and G.W., and where he has practiced the law of Government contracting, day in and day out.

Over the last decade, Phil has been lead counsel, or co-lead counsel, on several high-profile matters, including debarment actions, bid protests at the Government Accountability Office, contract claims at the Armed Services Board of Contract Appeals, and substantial contract awards.



He has also been the Navy's lead attorney on matters where the Department of Justice has intervened for the Government in district courts throughout the Nation, including several qui tam matters. Among other accolades, Phil has been awarded the Navy's Superior Civilian Service Award, and the Navy Meritorious Civilian Service Award for his work in the General Counsel's Office.

With such a distinguished record, I think this should be an easy confirmation. Of course, I am biased. But, I encourage the Committee to approve Phil's nomination, and, I thank you for having me.

Chair DURBIN. Thank you, Senator Vance. Your statement will be made part of the official record.

I now ask the staff if they would transition our witness table for the nominees.

Senator KENNEDY. Hell of a job, Vance.

[Laughter.]

Senator VANCE. Thank you.

Senator GRAHAM. We have some questions.

[Pause.]

Chair DURBIN. If I could ask the nominees to please step forward, and if you remain standing for just a moment? I ask you to please raise your right hand. Do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that the nominees have all answered in the affirmative, which we are relieved to report.

And, we start with Mr. Edwards. Five minutes. The floor is yours.

**STATEMENT OF JERRY EDWARDS, JR., NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF LOUISIANA**

Mr. EDWARDS. Good morning, Chair Durbin. And, thank you, and Ranking Member Graham, Members of the Committee, for the opportunity to appear before you today.

I would like to thank President Biden for nominating me, and also my home State Senators, John Kennedy and Bill Cassidy, for supporting me, and for their very, very kind words today.

I am so thankful to have the support and encouragement of my family, especially my parents. My father, who will always be "big Jerry"—I am, yes, "little Jerry"—who is supporting me from home, and my mother and stepfather, who are here with me today, all the way from Okinawa, Japan. The greatest blessing on my life is the privilege of having Ramona as my mom.

I am also joined by friends and colleagues, some of whom are here and many others who are watching and supporting me from home. I am grateful to my mentors and colleagues in Louisiana, who gave me opportunities to learn, grow, and serve in the legal profession, and in the community. It is a great honor to be with you today, and I am happy to answer your questions.

Chair DURBIN. Thank you very much. Mr. Long?

**STATEMENT OF BRANDON S. LONG, NOMINEE TO SERVE AS  
UNITED STATES DISTRICT JUDGE FOR THE EASTERN DIS-  
TRICT OF LOUISIANA**

Mr. LONG. First, let me thank you, Chair Durbin, Ranking Member Graham, and other Senators on this Committee, for convening today's hearing.

I am deeply grateful to Senator Cassidy and Senator Kennedy, and their staff, for supporting my nomination. And, I would like to thank both Senators for their gracious introductions.

I would also to thank President Biden for placing his faith in me. I am honored and humbled by this nomination.

I am joined here today by some pretty important folks. I would not be here without the heart and soul of our family, my wife, Elizabeth, who juggles a full-time career as an architect, with being a full-time mom, and still somehow finds time to spread kindness and joy to countless friends and family.

Also here are our two sons, ages 9 and 7. Everything is more joyful, more interesting, more colorful when they are around, and I could not be more proud to be their dad.

My mother, Bobbi, is here, bringing her trademark warmth, sense of humor, and unwavering optimism, along with my incredibly supportive sister, Gina.

We lost my dad, Buddy Long, almost 3 years ago, but his unmistakable imprint on our family endures. In my household growing up, character was paramount. My mom and dad raised me and my sister on some pretty simple rules: You always told the truth, you work hard because nothing substitutes for hard work, and you were respectful, and kind, to others. These are basic, yet fundamental principles that have guided me throughout my life.

Also in attendance are my father-in-law, Sam; mother-in-law, Nancy; and brother-in-law, Alex; along with our dear family friend, Tom Kitchen. These are some of the most generous and kind-hearted folks you will ever meet.

I would also like to acknowledge other family and friends who could not be here in person that are tuning in. I am lucky to have you in my corner.

Finally, I would like to recognize the fantastic attorneys and staff at the law firm King and Spalding, where I began my legal career, as well as my friends, and colleagues, throughout my stints at the Justice Department and, specifically, at the U.S. Attorney's Office in my hometown of New Orleans, where I currently serve.

With that, Senators, thank you, again, for considering my nomination, and I look forward to your questions.

Chair DURBIN. Thank you, Mr. Long. Judge Maddox?

**STATEMENT OF HON. MATTHEW JAMES MADDOX, NOMINEE  
TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE  
DISTRICT OF MARYLAND**

Judge MADDOX. Good morning, Chair Durbin, Ranking Member Graham, and Members of this Committee. Thank you for convening this hearing.

To President Biden, thank you for this nomination to serve as a United States district judge for the District of Maryland. This nomination is the honor of my career.

To Senator Cardin and Senator Van Hollen, I am honored by your kind introduction, and in the confidence that you have placed in my abilities by recommending me for this nomination, and the opportunity it presents to me to continue serving the community that has given so much to me, and to my family.

Speaking of family, I must acknowledge the presence of family members who are here in this room, and others watching remotely. Thank you, for your unwavering support.

My wife, Nicole, is present. She is my best friend, and my life partner, and my strongest and most constant supporter and benefactor. I will never be able to thank her enough.

My son is also present. I thank him for being my greatest inspiration.

My parents, Wayne and Camilla, are also here. Having you as my parents was my first and my longest-enduring blessing.

I would also like to acknowledge the many talented attorneys and judges I have had the fortune of calling colleagues, and from whom I learned the arts of lawyering and judging. Foremost among them are the judges for whom I had the honor of serving as a judicial law clerk: District Judge Gerald Bruce Lee and Circuit Judge Andre M. Davis, both retired. Your lessons remain with me, and have elevated the quality of my work since the day I met each of you.

I thank my chamber staff for the past year and a half you have given, to supporting my work as a magistrate judge.

And, finally, I want to acknowledge the many great teachers I have had throughout my education. Your work as educators is worthy of the highest recognition, not only by me, but, by all of us, for whom reaching our full potential would have never been possible without the vital roles that you have played in our lives.

Thank you. I look forward to any questions that Members of this Committee have for me.

Chair DURBIN. Thank you, Judge. Mr. Hadji?

**STATEMENT OF PHILIP S. HADJI, NOMINEE TO SERVE AS A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS**

Mr. HADJI. Thank you, Chairman Durbin, and Ranking Member Graham, for holding this hearing, and to your staff, who have been excellent to work with.

I am truly honored to be here, today, as a nominee to the Court of Federal Claims. Thank you, President Biden, for nominating me. Thank you to my home State Senators, Senator Brown and Senator Vance, for your bipartisan support of me, and for your thoughtful introductions.

Thank you, Senator Cassidy, for your support and your introduction.

And, thank you, also, to former Ohio Senator Portman, for your support.

I would like to introduce my family that is here today, and thank them all. First, I have to start with my wife, Katie. I certainly would not be sitting here today without Katie's support and encouragement. Also in attendance are my mom and dad, Yanna and Serge; and my brothers, Alexios and Andreas; and Alexios' wife,

Jamie. Last, my colleagues from the Navy Office of General Counsel who are here, and watching online, thank you.

I would be remiss if I did not say a few quick words about my parents because they have had such an impact on me and the reason why I am here today. My parents are both from Greece and, like many, immigrated to the United States for all of the opportunities that this great country affords.

My dad was born in 1942 during the Nazi occupation of Greece. Some of his earliest childhood memories were of the aftermath of World War II, including the Communist uprising that sparked the Greek civil war.

For example, he remembers being one of the lucky ones because his grandmother had chickens on their balcony in their apartment building. The chickens produced eggs, and because of this, he was able to eat even when food was often scarce. Ultimately, with the help of the United States through the Marshall Plan, democracy and capitalism prevailed in Greece.

As a first-generation American, the decision to come to America is very recent in our family's history. And, this history, that I have described, and love of country, and the rule of law, has certainly shaped me in profound ways, including my decision to spend my career in public service, and with the Navy.

For 12 years, I have had the privilege of working as an attorney in the Navy Office of the General Counsel, where I have handled legal matters in support of the critical national security mission of the warfighter, our sailors and Marines.

It is a great honor to be here, today, as a nominee, and I look forward to the Committee's questions.

Chair DURBIN. Thank you, Mr. Hadji.

I am going to start the questioning. Five-minute rounds for each of the Members of the Committee present today. And, let me say, at the outset, that the three judicial nominees have been judged "well qualified," and that is a matter of record. And, they certainly enjoy bipartisan support coming before us, and I wanted to just ask a question or two.

Mr. Edwards, you have been a litigator since 2006, working in private practice, and at the U.S. Attorney's Office in Shreveport. Before that, you clerked for two judges on the First Judicial District of Louisiana. So, you have been acquainted with a number of Federal judges. Tell me about the good ones, and tell me about the bad ones.

Mr. EDWARDS. Thank you, Chair—

Chair DURBIN. You do not need to name names.

[Laughter.]

Mr. EDWARDS. Thank you, Chair Durbin, for the question.

Senator KENNEDY. Be very careful here.

[Laughter.]

Mr. EDWARDS. I have been very fortunate to work with many, many great judges. Judge Jeanette Garrett and Judge, now Justice Scott Crichton, were the judges who brought me to Shreveport, in a way, because they offered me a clerkship, while I was in law school, for when I graduated. And, they taught me the importance of being engaged in the profession. And, I think that judges should be engaged in the profession to advance civility, and profes-

sionalism, and the rule of law in the community, by making sure that people in the community understand how the system works.

And so, I learned that, principally from them, and, I can tell you that every judge in Shreveport is a great judge.

[Laughter.]

Chair DURBIN. Pretty safe comment.

Mr. Long, it is a lifetime appointment. Tell me your opinion of good—the qualities of a good judge.

Mr. LONG. Chairman Durbin, I think the qualities of a good judge are, first and foremost, faithfully following the law, being prepared, having command of the law every time you walk into court, being a good listener, being open-minded, and hearing the testimony, seeing the evidence, and hearing the arguments from the parties. Being respectful of the litigants themselves, and creating an atmosphere where decorum is paramount in the court, and being humble.

Learned Hand said, know “that ye may be mistaken.” Realize when you need to give a matter an examination, and a re-examination, before rushing to a conclusion because that is what the litigants expect, and that is what the public expects, from the judges.

Chair DURBIN. Thank goodness, on this side of the panel, humility is really the trademark of a Senator. Right?

Senator GRAHAM. Right.

[Laughter.]

Chair DURBIN. Right. Judge Maddox, what is your experience, and what would you say are the qualities that you look for in a judge that you practice before, or serve, with?

Judge MADDOX. Thank you, Chair. My very first lesson in judging was the importance of preparation. Preparation, preparation, and more preparation. And, at the time of the hearing, keen listening. I agree with my colleague, Mr. Long, on that.

Preparation is highly important because every hearing presents an opportunity for a judge to convince, not just the litigants who appear before them, but, also the general public, that every litigant who does make an appearance will have their arguments, and their positions, considered very carefully by the judge. And, it is only through preparation can a judge convey that through the questions that they ask at the hearing, and through the comments that they make.

And, listening is equally important in that regard, and I have tried to convey, and have tried to emulate, those qualities in my work in the past year and a half that I have served as a magistrate judge in the District of Maryland.

Chair DURBIN. Let me ask you, Mr. Hadji, since your selection is for a little different position of responsibility, you have had a lot of experience working on Government contract matters, having served as a lawyer in the U.S. Navy for more than 10 years. You have worked on a range of issues, bid protests, contract claims, contract performance issues. How have these experiences, do you believe, prepared you to serve on the Court of Claims?

Mr. HADJI. Chairman Durbin, I think that the breadth of my experience, as you have described, is with the Navy doing Government contract law matters. A big part of the docket of the Court of Federal Claims is Government contract law matters. The court

hears claims against the United States for monetary relief, and I have had a lot of experience working on claims against the United States for monetary relief in the course of doing Government contract law work.

Chair DURBIN. Thank you. Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman. I think this is a good example of how the Committee can work.

And, to all my colleagues who made this day possible, thank you very much. Senators Kennedy and Cassidy, I think you have chosen wisely.

Mr. Long, you were—what role did you have at the FBI?

Mr. LONG. Senator, I was Deputy Chief of Staff to Director Wray.

Senator GRAHAM. Okay. What period of time?

Mr. LONG. This would have been in 2020, and the first half of 2021, and for a brief period of time, I was also the Acting Chief of Staff.

Senator GRAHAM. Okay. You were there on January 6th?

Mr. LONG. I was.

Senator GRAHAM. So, what have you learned from that experience? What is your take-away about January 6th?

Mr. LONG. Well, I want to be a little careful here, Senator. There are a number of open investigations, and open cases, right here in the District of Columbia. As a judicial nominee, and a Department attorney, it would not be appropriate for me to comment on January 6 cases.

Senator GRAHAM. I am not asking you to talk about the cases—about the event itself.

Mr. LONG. Well, again, Senator, I am—

Senator GRAHAM. Would you say it was a good day or a bad day for America?

Mr. LONG. It was a bad day for America, Senator.

Senator GRAHAM. Yes, that is all I am saying. I agree with you. So—the FBI. The FBI is taking a beating right now, at least on our side of the aisle. Did you have any knowledge of some of the accusations being made about FBI's handling of the Steele dossier, anything about the Hunter Biden investigation, about whether or not Mr. Weiss had all the power he needed? Do you know anything about that moment in time?

Mr. LONG. Well, with respect to the Crossfire Hurricane investigation, that predated my role at the FBI by a few years. With respect to the more recent investigations, no, I do not have any information. I have not been at the FBI in over 2 years. I have been prosecuting cases in New Orleans over the past 2 years. So, I do not have any information about those investigations.

Senator GRAHAM. So, you were there up until mid-2021. Is that right?

Mr. LONG. Yes, Senator.

Senator GRAHAM. Okay. So, apparently, some of these allegations by whistleblowers were made in the middle of 2020. Were you aware of any allegations being made regarding the investigation of Hunter Biden as not being fair?

Mr. LONG. Well, my understanding, Senator, is that there is an open investigation involving Hunter Biden—

Senator GRAHAM. No, my question: Did you know anything about this?

Mr. LONG. I do not have any information. No, I do not know anything about this.

Senator GRAHAM. So, you do not know—you have no recollection of Mr. Weiss asking for Special Counsel, additional assistant status?

Mr. LONG. Again, Senator, this involves an open investigation. As a Department of Justice attorney, as well as a judicial nominee, it is—I am bound not to comment on open investigations.

Senator GRAHAM. Okay. Thank you.

Chair DURBIN. Senator Booker.

Senator BOOKER. Thank you, Mr. Chairman. I can't help, always, but pause when I look at rooms like this, and just feel a sense of gratitude and pride in our country. And, to have people who have spent their lives, many of them, focused on public service, step forward to stand before our Senate Judiciary Committee for a lifetime appointment to serve in our Article III branch of Government.

And, I am always moved when I look at the families of the folks behind there, and I can only imagine the pride they feel, as well as the sense of commitment to this country, and our higher ideals. Our country's media tends to highlight our divisions. But, anybody who travels around this world knows how much we have as—in common, as a people, and I think that we all, or most of us, still have a common yearning that this Nation will live up to its ideals.

And, over the history of this country, one of the places where people have sought one of those highest ideals, justice, has been through our courts. And, there have been shameful chapters, and there have been incredibly righteous chapters. And, not just on the bigger issues, but often just someone looking for a fair shake at a crisis point in their lives.

So, I want to thank all the people that are here. I want to thank the families, in particular. It really moved me during the opening statements.

And this, as Senator Graham, who has been, I think, an incredible Ranking Member, in trying to keep comity in this Committee, and trying to create a process that can work. This is one of those times where we have seen a lot of bipartisan efforts to get to this moment.

I've—as one of the few African Americans in the Senate, I serve on Congressional Black Caucus, and there has been a lot of concerns about the overall process. Chairman, I know you are aware of that, because you spoke about it at the top. I have been disappointed with some mistakes, I believe, that the White House made in a process sense, and I am going to do everything I can, as, I think, the Chairman has committed, to try to make sure that we address those process concerns, that that does not take away from what I saw here today, as Republicans coming before the Committee, and those on the Committee. But, I think it is important to mention my commitment to working to improve this process.

I want to just finally say thank you to the folks that are sitting here, because this is not an easy process. It is not a quick process, and in many ways, you have to open your life up to the kind of

scrutiny that a lot of you probably did not sign up for. And—I am sorry, in an impolitic way—one of my friends has said, “This is one of the worst proctology exams anybody could ever imagine.”

[Laughter.]

Senator BOOKER. And so, I have limited time, and I am going to do something—because he is rascally and I appreciate him at times—is, I just want to talk about Senator Kennedy, if I can. And maybe, Mr. Long, you can help me out with an issue between two friends who are often put on the opposite sides of the ideological divide. Don’t worry, this is not a trap.

But, I think people would—they look at us, probably understand that we are not only different parties, but we have a lot of different beliefs. But, when it comes to opioids, if you took the Venn diagram of our beliefs, there is probably a lot of common ground between Senator Kennedy and I. Too many people are dying in our States.

And, I remember—the reason why I want to ask you this question, Mr. Long—when I was mayor of the City of Newark and I sat down with my FBI, and they were detailing me a lot of the challenges we were facing with drugs, I looked at them, and, this was a bit of a trap for the FBI Director, because I’d thought I knew what his answer was going to be. I go, “Well, how do we solve this problem?”

And, the FBI Director looked at me, and said very pointedly, “We don’t solve this problem, Mr. Mayor. The solutions to this problem are not law enforcement. The solutions to this problem are things that you are going to have to think a lot more creatively about. We are dealing with the symptoms of the problem.”

And so, my friend, Mr. Kennedy, and I, have had some private conversations. I was forced to go to the floor and object to one of his unanimous consents. I am not sure if he has forgiven me for that, yet. But, I want to ask you, very pointedly, when it comes to the opioid crisis in this country, is the solutions—in your opinion, having dealt with this space in the law enforcement capacity, are the solutions to this problem really going to come from law enforcement activities, or is it going to come from larger, public policy decisions that we might be able to make an effect?

Mr. LONG. Well, Senator, I think it is a really important question. I can tell you, I have prosecuted a number of opioid cases in my career, and was fortunate to serve as the opioid coordinator of the Eastern District of Louisiana U.S. Attorney’s Office. And, in that role, I worked shoulder to shoulder with not just State, and local, and Federal law enforcement, but also public health officials and other stakeholders in the community, to try to come up with some solutions.

And, we worked toward sort of addressing three prongs: Prevention and education, being one prong; treatment, being a second prong; and, enforcement, being a third prong. And, our approach was that all of those three things combined were essential to addressing the opioid crisis.

Senator BOOKER. So, we need strong enforcement of our laws, but we also need education, awareness, treatment, and things like that, are just as important? Or, do you put an order in them? You said, they are all three important.



Mr. LONG. Well, this is, again, my view based upon my experience dealing with the opioid crisis in the Eastern District of Louisiana, and particularly in New Orleans, where, at this point, opioid overdose deaths in New Orleans have far surpassed the murder rate in the city. And so, that was the approach that we took to try to address the crisis.

Senator BOOKER. I am grateful for that. You may have helped heal our relationship of Brother Kennedy and I, and I am hoping that your wisdom will inform probably some really strong actions.

Thank you, sir. And, Mr. Chairman, thank you for the time.

Chair DURBIN. Thanks, Senator Booker. Senator Kennedy.

Senator BOOKER. I did not know he was going to get a rebuttal so quickly.

[Laughter.]

Senator KENNEDY. Senator Booker has a silver tongue. Doesn't he? He's good.

I know Mr. Long, and I know Mr. Edwards. I don't know Mr. Hadji, or Judge Maddox. Congratulations to all four of you, though.

Judge Maddox, I think I will start with you. I just want to talk about the law a little bit. I stipulate that you will follow the law, and apply it to the facts of the case as you are guided, including, but not limited to, precedent.

I thought the Supreme Court just handed down some really interesting decisions. One of them has not been talked about much, but, I found it fascinating. Tell me about *Moore v. Harper*. That was the independent State legislature theory. What is that all about?

Judge MADDOX. Good morning, Senator.

Senator KENNEDY. Good morning.

Judge MADDOX. Yes, *Moore v. Harper* concerned whether or not the Elections Clause, in Article I of the Constitution, gave the State legislature sole authority to regulate elections for Federal office in their States, without any judicial oversight—

Senator KENNEDY. Mm-hmm.

Judge MADDOX [continuing]. And, the Supreme Court held that the Elections Clause did not preclude judicial oversight of the legislatures' regulation of Federal elections.

Senator KENNEDY. I can tell you looked at the case. Let—here's one way of looking at it. Every State has a State constitution, and—and, I want you to tell me if you think I am wrong here. Every State has a State constitution. And, in fact, many State constitutions preceded the Federal Constitution. And, some of the provisions in our Federal Constitution were copied directly from State constitutions.

And, as I read *Moore v. Harper*, what the Supreme Court is saying to a State legislature is, look, yes, Congress gave you the power to draw congressional districts, but, you have got to do it consistent with your State constitution. And, so the State courts get to weigh in. And, if the State courts do not render opinions that are consistent with the Federal Constitution, then the Federal courts get to weigh in.

What do you think?

Judge MADDOX. I believe that that is a fair reading of, or maybe, perhaps reading between the lines of that opinion. That particular

question is not one that I have considered previously, although I have reviewed that opinion.

Senator KENNEDY. Yes. I just found the whole case very interesting because the theory of the plaintiffs was that State legislatures can do anything they want to do with respect to congressional reapportionment, because Congress gave them power. But, it ignored the role of the Federal judiciary, and the State constitutions, which—anyway.

Mr. HADJI, tell me about—I need to get a life, I guess. Mr. Hadji, tell me about this Waters of the United States controversy. What is it all really about?

Mr. HADJI. Senator, I am not—I have been an attorney for 12 years with the Navy, and I have practiced in Government contract law for a long time, and I have worked on those kinds of issues for the last, almost, 12 years. I have not encountered that particular issue that you are referencing.

Senator KENNEDY. Okay. All right. Tell me—this will be my last question. Tell me, doesn't strict liability seem inherently unfair to you?

Mr. HADJI. So, my understanding of strict liability, Senator, is that there is limited circumstances for when it is applied, and my job—

Senator KENNEDY. Like what? Like what?

Mr. HADJI. Excuse me?

Senator KENNEDY. Give me some examples.

Mr. HADJI. Like in a product liability case, for example.

Senator KENNEDY. Yes.

Mr. HADJI. And, I think the idea of strict liability is under those limited circumstances to encourage the right sort of behavior for, let's say, a private manufacturer to not create a product that is going to kill a baby, for example, that severe consequences have to ensue.

Senator KENNEDY. Well, I am not saying I disagree with you. But, tell me how does it comport with due process? I mean, this is basically—some would argue, this is basically a legislature saying, hey, if you do it, you are automatically liable. You do not get due process. You do not get to defend yourself. There are no defenses.

What do you think about that?

Mr. HADJI. Well, my understanding is that strict liability comports with due process because you have the right to be heard in court, and, it is, I think, a good example of the balancing of the branches of Government from that perspective because it, like you said, takes Congress' perspective into consideration as well.

Senator KENNEDY. Thank you, gentlemen. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Kennedy. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chairman. Before leading into my question, let me kind of tee it up with a couple of experiences.

And, prior to joining the Senate, I served as a secretary of State for the State of California where, on a periodic basis, we would showcase, especially around Admission Day every year, the original California constitution, because, in fact, there was more than one, when California was becoming a State. There was both an English

language constitution that the legislature adopted, and a proclamación in Español, a Spanish proclamation, at the beginning of statehood for the State of California—just as historic evidence of the diversity of California from the very, very beginning.

Senator Kennedy, I believe, Louisiana had some similar history, not just with two languages, but three—

Senator KENNEDY. Mm-hmm.

Senator PADILLA [continuing]. English, Spanish—

Senator KENNEDY. Mm-hmm.

Senator PADILLA [continuing]. And, French.

Senator KENNEDY. Mm-hmm.

Senator PADILLA. So, our respective States have celebrated, and enjoyed—

Senator KENNEDY. Mm-hmm.

Senator PADILLA [continuing]. The benefits of beautiful diversity for a long time now.

And, I had a chance to see those original documents, last week, when I took my son to the archives—

Senator KENNEDY. Oh, really.

Senator PADILLA [continuing]. And we were doing some exploration there. So, it is fresh and top of mind, and I lead with that because my question, my primary question here today is about diversity. We have worked a lot in this Committee over the last couple of years to increase the diversity of the names recommended to the White House, those—the names of the folks nominated by the White House to serve on the Federal bench because we know the added value of diversity in the judiciary.

But, it is not just on the bench where diversity strengthens our judiciary. It is beyond just who sits on the bench. It is everybody else who works in a courtroom, particularly law clerks. Right? I think you all would agree, and please feel to chime in if you do not, that a quality clerkship experience was pivotal in your career, and your trajectory.

I mean, it is those clerkship experiences that lead to future Federal judges, for future leaders in private practice across the country. And so, my question for each of you is, if confirmed by this body, and the Senate as a whole, what would you do to ensure, and increase diversity in your courtrooms? And, we will begin with Mr. Edwards, and go down the row here.

Mr. EDWARDS. Thank you, Senator, for the question. And, I wholeheartedly agree with you that diversity is very important to the judiciary and, particularly, clerkship diversity. I was a clerk for two State court judges, it served as a springboard for me into private practice, and into the bar. It was an opportunity for me to meet all parts of our bar as a law clerk, and it really set my career, I think, on a good trajectory.

If I was so fortunate to be confirmed, I would be very intentional about casting a wide net to have as much diversity in my office as possible, because I do think that it increases, or enhances, public confidence in the judiciary, to have diversity in the courts.

Senator PADILLA. Thank you. Mr. Long?

Mr. LONG. I agree, Senator, with everything Mr. Edwards just said. I would also say that I think organizations on the whole are stronger to the extent that they take into account people from di-

verse perspectives, diverse viewpoints, diverse professional experiences, and I—if I am fortunate to be confirmed, I will certainly have that in mind, as I look to fill my chamber.

Senator PADILLA. Including colleges and universities. But, that is a topic for another day.

Judge Maddox?

Judge MADDOX. Yes. Like Mr. Edwards, I would like to, in my answer, go back to my own clerkship experience. And, in my first clerkship, I had an opportunity to help coordinate a nationwide internship program that was focused on increasing diversity among law students who obtain judicial internships. And, in that role, I helped recruit qualified law students from across the country to think about working in the judge's chambers, and to make applications, and to advise them on those applications to maximize the success of those applications.

After I left that clerkship, I continued to be involved in the program by helping to screen applicants for a series of years. And now, I have the fortune of serving as a judge where, now, I am participating in hiring from that program. So, I send—I receive applications, and recommendations, through that program for potential hiring in my own chambers, and sort have come full circle, with respect to my involvement in that diversity internship program.

Senator PADILLA. Thank you. Mr. Hadji?

Mr. HADJI. I will echo the sentiments of my colleagues. Diversity is important, and to include diversity of experience, and it is important at all stages in one's career, from college, and law school, and clerkships, and beyond.

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

Chair DURBIN. Thanks, Senator Padilla. Senator Hawley—I'm sorry—

Senator HAWLEY. I think it is Senator Blackburn.

Chair DURBIN. Senator Blackburn. Right.

Senator BLACKBURN. Thank you, Mr. Chairman. Congratulations to each of you. I know that you are excited about what the future holds for you, and for your families.

Mr. Edwards, one quick question for you. I had looked through your background, and it appears you have a lot of experience in civil matters. But, district courts have many criminal cases, and I could only find one criminal case, just one, where you had been counsel in a criminal case.

So, build this out for me. You have no experience, basically, on the criminal side. So, how would you function in that position as a district judge?

Mr. EDWARDS. Thank you, Senator. Over the course of my career, I have handled several criminal matters, but, you are correct that only one as counsel in Federal court. But, in my role as First Assistant U.S. Attorney, I have oversight over the Criminal Division in our office, as well as the Appellate Division in our office. And, over the last 15 or so months in that position, I have been involved with the entire criminal process, and have learned—

Senator BLACKBURN. So, you are confident in your ability—

Mr. EDWARDS. Yes, Senator.

Senator BLACKBURN [continuing]. To move forward handling—

Mr. EDWARDS. Absolutely, yes.

Senator BLACKBURN [continuing]. Criminal cases?

Mr. EDWARDS. Yes,

Senator BLACKBURN. Okay.

Mr. EDWARDS. Thank you.

Senator BLACKBURN. Mr. Long, let me come to you, if I may? As I went through your record, I noted your time as the Acting Chief of Staff for Director Wray, and that caught my attention. I noted that you were there in that position when the Hunter Biden laptop story broke in October of 2020. Is that correct?

Mr. LONG. In October of 2020, Senator, I would have been the Deputy Chief of Staff.

Senator BLACKBURN. The Deputy Chief of Staff, okay. And so, you were there when the FBI, despite having possession of that laptop, refused to correct all the misinformation that was out in the media. And, the FBI's mishandling of the Hunter Biden laptop is one example of why people think there is a two-tier system of justice.

I did a Telephone Town Hall last night, with several thousand Tennesseans on that Telephone Town Hall. And, lack of trust with the FBI, just really a disappointment with the political cabal inside the FBI, is something that came up repeatedly in the questions that people brought to me.

I noted that you were also there when concerned parents that went to school board meetings were labeled as "domestic terrorists." And also, during that time, the FBI targeted pro-life individuals. They allegedly obstructed the Hunter Biden tax probe. And this—we need to know what your participation in all of this, was.

So, Senator Graham has already asked you about this, and I want to drill a little bit further on this. Did you participate in any meetings, any memos, any emails that would have provided discussion, advice, or guidance on how to handle the Hunter Biden laptop situation? Did you participate in any meetings, any writings, any memos, any advice, any guidance on labeling parents as "domestic terrorists"? Did you participate in any meetings on how to handle parents at school board meetings?

What was your knowledge of, and your participation in, those decisions, in those actions that the FBI carried out, during that time that you were there, the Deputy Chief of Staff, the Acting Chief of Staff?

Mr. LONG. Well, Senator, let me, maybe, explain my role a little bit as the Deputy Chief of Staff at the FBI—

Senator BLACKBURN. I think we know. I do not want you to—my time is going to run out. I want you to answer the question. We know what the role is. We know what the job description is.

Mr. LONG. Well, Senator, specifically with respect to the Hunter Biden matter, I am a Department of Justice employee.

Senator BLACKBURN. Mm-hmm.

Mr. LONG. I am a judicial nominee. That is a pending matter, and it would be—

Senator BLACKBURN. We fully realize that. I am asking, as did Senator Graham, and, I know you did not want to answer his question, either. So, why don't you submit for me in writing, and include any emails, any memos, anything that you participated in. I would like to know.

Two tiers of justice is one of the main concerns of Tennesseans. They want fairness. They want equal treatment.

And sir, I have a problem with the fact that you were there in a leadership role during a time when actions were taken by a few people within the FBI that has caused enormous distrust.

So, I am asking you to submit to me in writing so that we know what your participation was in this. It is something that has upset this country terribly. Thank you, Mr. Chairman.

Chair DURBIN. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. To ensure the fitness of all nominees who appear before any of the Committees on which I sit, I ask the following two initial questions, which I will ask each of the panel, which are the nominees, and we will start with Mr. Edwards.

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?

Mr. EDWARDS. No, Senator.

Mr. LONG. No, Senator.

Judge MADDIX. No, Senator.

Mr. HADJI. No, Senator.

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

Mr. EDWARDS. No, Senator.

Mr. LONG. No, Senator.

Judge MADDIX. No, Senator.

Mr. HADJI. No, Senator.

Senator HIRONO. Thank you. Mr. Edwards, as an Assistant U.S. Attorney, you were an attorney in a lawsuit successfully requiring local schools to desegregate, and bring in more minority students and faculty. What is the importance of these desegregation orders to the community, and how do they advance our Nation's ongoing commitment to equality?

Mr. EDWARDS. Thank you, Senator, for the question. I've—as Chief of our Civil Division in the U.S. Attorney's Office in the Western District of Louisiana, I assisted my colleagues here in Washington with the ongoing consent decree matters pending in our district. And, I can say, that all of those cases worked toward ensuring that past vestiges of de jure discrimination were being remedied.

Senator HIRONO. Thank you for that. Because I do think that we still face issues relating to racial discrimination, and equality, in our country. That is for certain.

You also served as chair of the Louisiana Judiciary Committee, receiving complaints against State judicial officers. So, you evaluated the character and fitness of candidates for the State bar, among other things. So, why are judicial ethics and judicial integrity important to the justice system?

Mr. EDWARDS. Senator, judicial ethics is very important to public confidence in the judicial system. In courts, generally, someone is going to be disappointed in the outcome of a case.

Senator HIRONO. Mm-hmm.

Mr. EDWARDS. But, judicial ethics, if properly followed, can ensure that everyone has confidence in the process that they went through to reach that outcome.

Senator HIRONO. I think I—relating to the fact that our Supreme Court does not have a code of ethics, I won't put you on the spot with that one, but there are some of us here who consider that very important.

For Judge Maddox, among your speaking engagements, you served as a presiding judge in naturalization ceremonies for new Americans. These are important civic events that bring together communities, and our country's newest citizens.

What did it mean to you to participate in the naturalization ceremonies, and what lessons did you learn when you presided over these ceremonies?

Judge MADDOX. Well, thank you for that question, Senator. I can say, that my experience presiding at naturalization ceremonies may be among the most gratifying experiences that I have had as a judge. Never as a judge do you get an opportunity to see so many smiling faces in the same place, and everybody walk in happy, and everybody walk out happy, where nobody loses.

But, more importantly, the lesson that I draw from each of those events is the vast range of experiences that bring the people in that room, to that room. And, they meet in the same place, but they come from literally all over the world. And, there must be something that they hold in common that brings them there, and what they hold in common becomes evident in the course of that ceremony. They want—they picked this country, out of anywhere else in the world, to live out the rest of their lives.

So, there is something special about this country that brings everyone into that room, from all over the world. And, to be reminded of that—

Senator HIRONO. Mm-hmm.

Mr. EDWARDS [continuing]. And the gravity of that, I think, is humbling as a judge, and it is a lesson that I take with me in my work, throughout my caseload.

Senator HIRONO. We often refer to our country as a country of immigrants, except for the Native peoples who were here long before the white people came. So, yes, I think it is really important that the naturalization ceremonies, which I have also participated in, both as a naturalized citizen, but also, as a Member of Congress, have been very, very touching to see all these people who come to our country with the promise that our country holds for a better life for themselves, and their families. That is very, very obvious. And, there are tears, and, as you say, a lot of smiles. Thank you very much for your participation in these very important ceremonies. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Hirono. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Congratulations to the nominees.

Mr. Long, I did not understand your answer to Senator Blackburn. So, I just wanted to come back to that for a second, if I could? She asked you if you'd participated in any meetings at all related to the Hunter Biden laptop. Was that a yes or a no?

Mr. LONG. Senator, as a Department of Justice employee bound by Section 1–7 of the Justice manual, as well as a judicial nominee, it is not appropriate for me, and I am bound not to——

Senator HAWLEY. Why—wait, wait, wait, wait. Why isn't it appropriate for you as a judicial nominee? This does not have anything to do with any case that you have. Right? I am asking you what you did in your former employment as the Deputy Chief of Staff to the FBI Director. Did you participate in any meetings related to the Hunter Biden laptop?

Mr. LONG. Senator, again, as a Department of Justice employee——

Senator HAWLEY. It sounds like you are not going to answer me. Is this going to be a, “I am not going to answer you” type deal?

Mr. LONG. Senator, I am bound to follow the Code of Judicial Conduct——

Senator HAWLEY. The Code of Judicial Conduct does not have any bearing on this question, whatsoever. What possible bearing could it have? That is a question mark.

Mr. LONG. Well, Senator, as the Code of Judicial Conduct requires integrity, and independence in the judiciary. It requires judicial officers to act with——

Senator HAWLEY. It is not a “get out of jail free” card, when you do not want to answer questions when you are under oath before a Committee who is considering you for a lifetime appointment to the Federal bench. I am going to try one last time.

Did you participate in any meetings during your time as Deputy Chief of Staff, or Acting Chief of Staff, related to the Hunter Biden laptop, yes or no?

Mr. LONG. Senator, again, I am not permitted to answer.

Senator HAWLEY. Oh, you are permitted to answer. You do not want to answer because it would be inconvenient for you. And, I have to tell you, I find that extremely troubling, Mr. Long. Extremely troubling. Not a good start.

Let's see if we can do better on a different topic. While you were at the Department of Justice—sorry, at the FBI, in your capacity as Deputy Chief of Staff, and Acting Chief of Staff, did you ever observe FBI resources being used to monitor pro-life groups, or pro-life individuals?

Mr. LONG. No, Senator. I do not have any information about that.

Senator HAWLEY. What about Catholic parishes, or Catholic groups?

Mr. LONG. No, Senator.

Senator HAWLEY. Now, I notice you are happy to answer those questions, but you are not happy to answer the Hunter Biden questions—they are not qualitatively different. I would just like to note that for the record.

Are you familiar [holds up document] with this memo generated by the FBI field office in February—sorry, in January of 2023, regarding the infiltration of Catholic parishes by the FBI? I am sure you have seen this in the news.

Mr. LONG. I have not seen that memo, but, I have seen news reports relating to that memo.



Senator HAWLEY. Well, let me tell you what is in the memo. In the memo, the FBI field office, in Richmond, recommends infiltrating Catholic parishes that it deems traditionalists, associated with the Latin Mass, recruiting FBI informants, within those parishes, to monitor speech within the parishes.

The House Judiciary Committee has later learned, this is in a letter dated April 10, 2023, that the FBI relied on, at least, one undercover agent to produce its analysis, in this memo, and the FBI has proposed that its agents engage in outreach to Catholic parishes to develop sources among the clergy.

Did any of this occur while you were at the FBI?

Mr. LONG. Senator, I have not been at the FBI in over 2 years.

Senator HAWLEY. That is not my question. Did any of this occur while you were at the FBI? Did you see anything like this happening while you were at the FBI?

Mr. LONG. I did not, Senator.

Senator HAWLEY. Do you think it is appropriate?

Mr. LONG. Senator, I have not worked at the FBI in close to 2 years.

Senator HAWLEY. I am not asking you that. I am asking do you think that this—do you think this [holds up document] is appropriate? Do you think it is appropriate to recruit informants in Catholic parishes?

Mr. LONG. Senator, I do not know the circumstances underlying that memo. I have not reviewed that memo. It would not be appropriate for me to comment on it.

Senator HAWLEY. Well—it is not appropriate for you to comment on whether or not the Federal Government of the United States should be infiltrating religious entities, and organizations, and trying to recruit informants, and sources, in the clergy? You do not have an opinion on that? You want a lifetime Federal appointment to the judiciary to conduct impartial justice, but, you can't say that this [holds up document] is inappropriate?

You know, let me give you a refresher course. The Attorney General of the United States sat right where you are sitting, and he could not run away fast enough from this. He said it was a gross abuse of Department authority. He claimed that it had never happened. He was not telling the truth, as it turns out.

But, he said that if it was happening, he would put a stop to it immediately—immediately. Because it was grossly inconsistent with the First Amendment of the Constitution of the United States. Can you say that?

Mr. LONG. Senator, that was not—that memo and the conduct that it relates to was not anything that I would have discussed—

Senator HAWLEY. I am not asking you that. I am asking you whether or not you can say, as a jurist, as a lawyer, as a member of the bar, as an American, whether this [holds up document] is appropriate—to be recruiting informants in Catholic churches, to be using Federal Government resources to go after clergy in Catholic churches, to be designating, and treating, members of Catholic parishes as terrorists. Is that appropriate or not?

Mr. LONG. Senator, again, based upon my experience at the FBI, this was not something that we ever discussed. This was not—I

have never seen that memo before. It would not be appropriate for me to comment.

Senator HAWLEY. I cannot believe your answers. I cannot believe that any—I can't believe anybody who would come before this Committee, would look at this, and look at what they have tried to do, and just listen to the Attorney General, for heaven's sake, and would not say it is grossly inappropriate. This should never happen. I am absolutely stunned by this. And, for that reason, among others, I cannot support your nomination. Thank you, Mr. Chairman.

Chair DURBIN. Senator Lee.

Senator LEE. Mr. Maddox, I would like to start with you. In 2000, you worked for a group called ACORN, the Association of Community Organizations for Reform Now. It is a left-wing organization, an advocacy group mired in scandal over allegations of election interference, embezzlement, and other illicit activities.

What were your responsibilities in that role, when you worked for ACORN?

Judge MADDOX. Good morning, Senator. I worked for ACORN approximately 23 years ago for a couple of months, and my role was primarily focused on the membership drive where I visited and canvassed neighborhoods in Washington, DC, recruiting members for the organization.

Senator LEE. Did you ever participate in ACORN's voter registration drives?

Judge MADDOX. You know, Senator, looking back, I am not sure whether there was a voter registration component to recruiting members to the organization. I think that that is possible. I do not specifically remember it. And, I have to note that you mentioned a scandal earlier. It is my understanding that that scandal arose several years after my involvement in ACORN ended, and I did not witness any voter registration fraud, and certainly did not participate in any.

Senator LEE. You were there in 2000, and left thereafter?

Judge MADDOX. Correct, sir.

Senator LEE. Okay. Now, you said it in your bio, that you had been a member of the American Constitution Society starting in 2008. Is that correct?

Judge MADDOX. As a law student, I was a member of the organization at Yale Law School. Yes, Senator.

Senator LEE. Okay. Now, the American Constitution Society is advocating very strongly for what they characterize broadly as, quote, "Supreme Court reform." If you go to the organization's website, it puts a little bit more detail on the matter. It says, quote, "Our Supreme Court is in a full-fledged legitimacy crisis. Put simply, we no longer have a Supreme Court that can be trusted to uphold constitutional rights, democratic principles, and judicial norms, in this country," closed quote. Let's just pause right there. I have got more I want to read from that.

Do you agree with that, so far?

Judge MADDOX. Senator, my involvement with ACS ended at the time that I graduated from law school, and I am not aware of any positions that they have taken on this particular issue. But, as a sitting judge, I am bound to follow the precedents set by the Su-

preme Court, and I do so, faithfully, in my work, and I will continue to do so, if I have the fortune of being confirmed for a district judgeship.

Senator LEE. Do you agree with the assertion made in the statement that I just read to you?

Judge MADDOX. Senator, as a sitting judge, I do not believe it would be appropriate for me to comment on that particular issue. That issue could be an issue that comes before me in my role as a judge, and I do not believe that it would be proper for me to comment on that.

Senator LEE. Right. Well, I would certainly hope that as a sitting judge, or as a judicial nominee to become a judge, you could not reach any comment other than to say, I disagree with it. I mean, this is calling into question the legitimacy of the Court. It is saying that we no longer have a Supreme Court that can be trusted to uphold constitutional rights.

Are you saying you take no position as to that, and that you cannot take any position as to that?

Judge MADDOX. I was referring to any arguments that that organization may have to support the position that you have been describing. I can say that as a judge, I treat the Supreme Court's majority opinions as the law, as the state of the law. And, I apply it in the cases where it applies. Any cases before me, that come before me in my role as a judge, I apply relevant Supreme Court cases.

Senator LEE. Why would it be asking too much for you to say, I disagree with ACS' characterization that the Supreme Court cannot be trusted to uphold constitutional rights?

Judge MADDOX. I follow the Supreme Court in everything that I do, Senator. It is the—they set the supreme law of the land, and I follow that law, and apply it in my cases.

Senator LEE. Even as—

Judge MADDOX. As far as I am concerned, the Supreme Court is a legitimate institution.

Senator LEE. Okay. And, an institution that can be trusted to uphold constitutional rights?

Judge MADDOX. That is the institution that is charged with upholding constitutional rights, Senator, and I follow their direction.

Senator LEE. Now, let me continue with the quote. It goes on to say, "This is the result of the right packing the Supreme Court and of the Court's resulting conservative super majority being driven by a staunchly partisan agenda that is increasingly hostile to fundamental rights and judicial norms," closed quote. Let's unpack that one, and let's go to the first part of that sentence: "This is result of the right packing the Supreme Court."

Do you agree with that characterization? Has anyone packed the Supreme Court in your lifetime?

Judge MADDOX. I understand that the Supreme Court Justices have been duly appointed to those positions. They were nominated by the President at the time of their appointment, and the Senate confirmed their nominations. And, that is how—that is the process that each one of those Justices underwent that got them to the Supreme Court, and that is the law. That law was followed in each of those instances.

Senator LEE. And, in fact, the number of Justices on the Supreme Court has not changed in over 150 years. So, do you agree with the characterization that they have packed the Supreme Court, that anyone has packed the Supreme Court—in your lifetime, in the last 100 years, in the last 150 years?

Judge MADDOX. Again, Senator, I am not familiar with the positions that this organization has taken on this particular issue. I am not sure——

Senator LEE. I just told you that position. They said that the Court has been packed.

Judge MADDOX. But, I am really not sure what they mean by “packed.” I think that the persons who occupy the seats on the Supreme Court currently were duly appointed to those positions.

Senator LEE. Okay. I am out of time. Let me just finish with one thought here. They characterized the Court, at the end of that sentence, as, quote, “increasingly hostile to fundamental rights and judicial norms.”

Do you agree, or disagree, with that statement?

Judge MADDOX. I would not agree with the statement that they have been hostile to fundamental rights, Senator.

Senator LEE. Thank you.

Chair DURBIN. Thank you very much. I thank the nominees for gathering today, and the families for being part of this process.

Before we adjourn, I am going to take a quick logistical note and make record of it. Questions for the record will be due to the nominees by 5 p.m. on Wednesday, July 19, and the record will likewise remain open until that time to submit letters and supplemental materials.

And with that, this hearing stands adjourned.

[Whereupon, at 11:32 a.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

# **A P P E N D I X**

## **ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD**

Witness List  
Hearing before the  
Senate Committee on the Judiciary

“Nominations”

Wednesday, July 12, 2023  
Dirksen Senate Office Building, Room 226  
10:00 a.m.

Jerry Edwards, Jr., to be United States District Judge for the Western District of Louisiana

Brandon S. Long, to be United States District Judge for the Eastern District of Louisiana

Matthew James Maddox, to be United States District Judge for the District of Maryland

Philip S. Hadji, to be a Judge of the United States Court of Federal Claims

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).  
Jerry Edwards, Jr.
2. **Position:** State the position for which you have been nominated.  
United States District Judge for the Western District of Louisiana
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 Attorney's Office  
Western District of Louisiana  
300 Fannin Street, Suite 3201  
Shreveport, Louisiana 71101
4. **Birthplace:** State year and place of birth.  
1979; Shreveport, Louisiana
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
2002 – 2005, Vermont Law and Graduate School; J.D., 2005  
1997 – 2002, Georgia State University; B.A., Political Science, 2002
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.  
2019 – present  
United States Attorney's Office  
Western District of Louisiana  
300 Fannin Street, Suite 3201

Shreveport, Louisiana 71101  
 First Assistant United States Attorney (2022 – present)  
 Chief, Civil Division (2020 – 2022)  
 Deputy Chief, Civil Division (2020)  
 Assistant United States Attorney (2019 – present)

2006 – 2019; December 2004; Summer 2004; Summer 2003  
 Blanchard, Walker, O'Quin & Roberts (A Professional Law Corporation)  
 333 Texas Street, Suite 700  
 Shreveport, Louisiana 71101  
 Shareholder and Director (2014 – 2019)  
 Associate (2006 – 2014)  
 Law Clerk (December 2004, Summer 2004, Summer 2003)

2005 – 2006  
 First Judicial District Court of Louisiana  
 501 Texas Street  
 Shreveport, Louisiana 71101  
 Law Clerk

Summer 2005  
 Vermont Law and Graduate School  
 164 Chelsea Street  
 South Royalton, Vermont 05068  
 Temporary Employee

Summer 2003  
 Caddo Parish Clerk of Court  
 501 Texas Street, Suite 103  
 Shreveport, Louisiana 71101  
 Summer Employee

1998 – 2002  
 Gingiss Formalwear  
 4400 Ashford Dunwoody Road  
 Atlanta, Georgia 30346  
 Sales Associate

Other affiliations (uncompensated)

2022 – present  
 Bar Association of the Fifth Federal Circuit  
 600 Camp Street, Room 131  
 New Orleans, Louisiana 70130  
 Board of Directors

2022 – present  
Shreveport Common, Inc.  
801 Crockett Street, Suite 206  
Shreveport, Louisiana 71101  
Board of Directors

2018 – present  
Harry V. Booth - Judge Henry A. Politz Inn of Court  
P.O. Box 352  
Shreveport, Louisiana 71162  
President (2022 – present)  
Vice President (2020 – 2022)  
Secretary/Treasurer (2018 – 2020)

2021 – present  
Vermont Law and Graduate School Alumni Association  
164 Chelsea Street  
South Royalton, Vermont 05068  
Board of Directors

2021 – present  
The Shreveport Club  
410 Travis Street  
Shreveport, Louisiana 71101  
Board of Directors

2020 – present  
Alexandria VOA Living Center, Inc.  
Bossier City VOA Independent Housing, Inc.  
Pineville Volunteers of America Living Center, Inc.  
Ruston VOA Living Center  
Shreveport VOA Community Living Center I, Inc.  
Shreveport VOA Community Living Center II, Inc.  
360 Jordan Street  
Shreveport, Louisiana 71101  
Vice President

2016 – present  
Community Foundation of North Louisiana  
401 Edwards Street, Suite 105  
Shreveport, Louisiana 71101  
Vice-Chair (2022 – present)  
Secretary (2021 – 2022)  
Board of Directors (2016 – present)

2018 – 2020



Red River Stem, Inc.  
820 Clyde Fant Parkway  
Shreveport, Louisiana 71101  
Board of Directors

2006 – 2012; 2014 – 2020  
Volunteers of America North Louisiana  
360 Jordan Street  
Shreveport, Louisiana 71101  
Board of Directors (2006 – 2012; 2014 – 2020)  
Chair (2018 - 2020)  
Vice Chair (2016 – 2018)  
Secretary (2014 – 2016)

2018 – 2019  
Louisiana Bar Foundation  
1615 Poydras Street, Suite 1000  
New Orleans, Louisiana 70112  
Board of Directors

2016 – 2018  
Junior Achievement of North Louisiana  
212 Texas Street, Suite 101  
Shreveport, Louisiana 71101  
Board of Directors

2008 – 2011; 2018  
Shreveport Bar Foundation  
625 Texas Street  
Shreveport, Louisiana 71101  
Board of Directors

2016 – 2018  
Louisiana Budget Project  
619 Jefferson Highway, Suite 1-D  
Baton Rouge, Louisiana 70806  
Board of Directors

2011 – 2013  
Coalition for Louisiana Progress, Inc.  
650 North 6th Street  
Baton Rouge, Louisiana 70806  
Board of Directors

2008  
YMCA of Northwest Louisiana

3455 Knight Street  
Shreveport, Louisiana 71105  
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 registered for the selective service upon turning 18.

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

Listed as a Louisiana Rising Star in Louisiana Super Lawyers (2012 – 2014; 2016 – 2018)

40 Under Forty Young Professionals, Shreveport Chamber of Commerce (2015)

Hot List by Lawyers of Color (2014)

Minority Business Professional of the Year Nominee, Shreveport Chamber of Commerce (2013)

Vermont Law School Alumni Award (2005)

Georgia State University Academic & Co-Curricular Excellence Award (2002)

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

American Bar Association (2006 – 2019)

Bar Association of the Fifth Federal Circuit, Board of Directors (2022 – present)

Black Lawyers Association of Shreveport – Bossier City (2005 – present)

Caddo Parish Indigent Defender Board (2007)

Federal Bar Association (2007 – 2019; 2022 – present)

Harry V. Booth - Judge Henry A. Politz Inn of Court (2007 – present)

President (2022 – present)

Vice President (2020 – 2022)

Secretary/Treasurer (2018 – 2020)

Judiciary Commission of Louisiana (2011 – 2015)

Chair (2014 – 2015)

Vice Chair (2013 – 2014)

Louisiana Association of Defense Counsel

Young Lawyers Liaison Committee Member (2009)

Louisiana Bar Foundation (2011 – present)

Northwest Community Partnership Panel (2011 – 2018)

Board of Directors (approximately 2018 – 2019)

Louisiana Judicial Campaign Oversight Committee (2016 – 2018)

Louisiana State Bar Association (2006 – present)

Young Lawyers Division Council Member (2011 – 2015)

Leadership Class (2010)

Louisiana State Law Institute

Power Attorney for the Elderly Committee (2010)

Louisiana Supreme Court Committee on Bar Admissions

Character and Fitness Panel (2019 – present)

Shreveport Bar Association (2006 – present)

Programs Committee Chair (2018)

Young Lawyers Section President (2009)

Law Day Chair (2008)

Shreveport Bar Foundation

Board of Directors (2008 – 2011; 2018)

United States Bankruptcy Judge Merit Selection Panel (2014)

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.

Louisiana, 2006

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 Fifth Circuit, 2006  
 United States District Court for the Eastern District of Louisiana, 2006  
 United States District Court for the Middle District of Louisiana, 2006  
 United States District Court for the Western District of Louisiana, 2006

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.

Centenary College of Louisiana  
 Audit Committee Member (2023 – present)

Community Foundation of North Louisiana  
 Letter of Intent Committee (2014 – 2016)  
 Community Catalyst (2006)

Omega Psi Phi Fraternity, Inc. (2000 – present)

Shreveport Chamber of Commerce  
 Leadership Shreveport (2011)  
 Young Professional Initiative Executive Committee (2009)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Omega Psi Phi Fraternity, Inc. is a historically African-American college fraternity, which also includes alumni chapters, with membership limited to only 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.

*Wills for Heroes*, The Bar Review, April 10, 2023. 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.

While I was a member of the Louisiana Judicial Campaign Oversight Committee (2016 – 2018) the Committee would occasionally issue a public statement through the Chair of the Committee. I did not prepare the statements, but they were the result of confidential Committee deliberations. The statements only required a majority vote of the members and I do not recall how I voted on these statements. The Committee members are bound by Louisiana Supreme Court confidentiality rules regarding the deliberations even after we leave the Committee. The public statements are listed below.

December 5, 2018: Public Statement regarding candidate Williams. Copy supplied.

October 30, 2018: Public Statement regarding candidate Marchman. Copy supplied.

October 29, 2018: Public Statement regarding candidate Marchman. Copy supplied.

October 26, 2018: Public Statement regarding candidate Marchman. Copy supplied.

November 4, 2016: Public Statement regarding candidate Cox. Copy supplied.

November 4, 2016: Public Statement regarding candidate Caraway. Copy supplied.

October 31, 2016: Public Statement regarding candidate Cox. Copy supplied.

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

I have searched my records for all materials connected to presentations I have given during my career. I did not retain the notes, outlines, or materials from presentations I delivered during my time in private practice, prior to 2019. Where possible, I have obtained copies of those materials from other sources.

March 2, 2023: Panelist, Fifth Circuit Civil and Criminal Law Update, The Bar Association of the Fifth Federal Circuit and the Shreveport Bar Association, Shreveport, Louisiana. Power Point supplied.

April 28, 2022: Panelist, Three Common Intersections Between Bankruptcy and Other Practice Areas and Updates on Issues Impacting Bankruptcy Filings, Federal Bar Association – Lafayette/Acadiana Chapter, Lafayette, Louisiana. Materials supplied.

December 16, 2021: Presenter, Taking the Fear Out of Federal Court or Oh No! My Case Was Removed to Federal Court. Help!, Shreveport Bar Association, Shreveport, Louisiana. Outline supplied.

December 1, 2021: Panelist, I'm From the Government and I'm Here to Help, Louisiana State University Law Center, Baton Rouge, Louisiana. Power Point supplied.

December 10, 2019: Panelist, Update on Federal Jurisdiction & Procedure, Shreveport Bar Association, Shreveport, Louisiana. Outline supplied.

October 11, 2018: Panelist, Changes in the Practice of Law, Shreveport Bar Association, Shreveport, Louisiana. This was a panel discussion regarding generational differences in the practice of law. I have no notes, transcript, or recording. The address for the Shreveport Bar Association is 625 Texas Street,

Shreveport, Louisiana 71101.

December 12, 2017: Panelist, Changes in the Practice of Law, Shreveport Bar Association, Shreveport, Louisiana. This was a panel discussion regarding generational differences in the practice of law. I have no notes, transcript, or recording. The address for the Shreveport Bar Association is 625 Texas Street, Shreveport, Louisiana 71101.

June 5, 2016: Panelist, Judicial Discipline: Transparency, Efficiency and Fairness, Louisiana State Bar Association, Destin, Florida. Materials supplied.

May 10, 2016: Panelist, Staying out of Jeopardy: The Ethics Quiz Game, Fifth Circuit Judicial Conference, Houston, Texas. This presentation was on judicial ethics. I have no notes, transcript, or recording. The address for the Office of the Circuit Executive for the Federal Fifth Circuit is 600 Camp Street, Room 109, New Orleans, Louisiana 70130.

December 15, 2015: Presenter, Torts Update, Shreveport Bar Association, Shreveport, Louisiana. Materials supplied.

December 10, 2015: Presenter, Judiciary Commission Overview, Louisiana Judicial College, New Orleans, Louisiana. Power Point supplied.

October 15, 2015: Presenter, Torts Update, Shreveport Bar Association, Shreveport, Louisiana. Materials supplied.

April 30, 2015: Panelist, Proposed Changes to the Judicial Discipline Process, Louisiana Judicial College, Shreveport, Louisiana. Materials supplied.

February 2015 (specific date unknown): Panelist, Overview of Judicial Discipline, Louisiana Judicial Council, National Bar Association. This presentation was an overview of the Louisiana Judiciary Commission. I have no notes, transcript, or recording. The address for the Judicial Council is P.O. Box 3242, Baton Rouge, Louisiana 70821.

December 10, 2014: Presenter, Judiciary Commission Overview, Louisiana Judicial College, New Orleans, Louisiana. Power Point supplied.

October 9, 2014: Presenter, MSJs and other Motions, Shreveport Bar Association, Shreveport, Louisiana. Materials supplied.

June 4, 2014: Panelist, Recent Developments in Default Judgment Procedure, Louisiana State Bar Association, Destin, Florida. Materials supplied.

2013 (specific date unknown): Panelist, Louisiana Rules for District Courts, Louisiana Association of Defense Counsel, Shreveport, Louisiana. This

presentation was on the Uniform Rules for Louisiana District Courts. I have no notes, transcript, or recording. The address for the Louisiana Association of Defense Counsel is 8982 Darby Avenue, Baton Rouge, Louisiana 70806.

2013 (specific date unknown): Panelist, Keep Your Robe On: Avoiding Judicial Misconduct, Louisiana Judicial College, Shreveport, Louisiana. This presentation was on the Louisiana Code of Judicial Conduct. I have no notes, transcript, or recording. The address for the Judicial Administrator for the Louisiana Supreme Court is 400 Royal Street, New Orleans, Louisiana 70130.

December 17, 2013: Panelist, Curatorships, Shreveport Bar Association, Shreveport, Louisiana. Materials supplied.

January 20, 2012: Panelist, Ethics: Minding your P's and Q's, Louisiana State Bar Association, New Orleans, Louisiana. Outline supplied.

December 14, 2011: Panelist, Ethics: Minding your P's and Q's, Shreveport Bar Association, Shreveport, Louisiana. Outline supplied.

February 3, 2011: Panelist, Best Practices to Implement Diversity, Louisiana State Bar Association. This presentation was on best practices to achieve diversity in law firms. I have no notes, transcript, or recording. The address for the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

December 15, 2010: Panelist, Law Office Management, Shreveport Bar Association. This presentation was on best practices to manage a small or solo law firm. I have no notes, transcript, or recording. The address for the Shreveport Bar Association is 625 Texas Street, Shreveport, Louisiana 71101.

2009 (specific date unknown): Panelist, Pretrial Procedure and Motion Practice, Louisiana Association of Defense Counsel, Shreveport, Louisiana. This presentation was on best practices for pretrial motions. I have no notes, transcript, or recording. The address for the Louisiana Association of Defense Counsel is 8982 Darby Avenue, Baton Rouge, Louisiana 70806.

- 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.

*Not Guilty: Jury Clears DA Jason Williams on All Counts in Tax Fraud Trial*, WWL TV 4, July 28, 2022. Recording available at <https://www.wwltv.com/article/news/local/orleans/jason-williams-verdict-federal-tax-fraud/289-55270278-5919-424e-af63-e4d92c07960c>.

*Carolyn Hammond Named President and CEO, Volunteers of America North*



Louisiana, February 4, 2022. Copy supplied.

*Blanchard Walker Partner, Jerry Edwards, Named 40 under 40 Recipient, Blanchard, Walker, O'Quin & Roberts, 2015. Copy supplied.*

*Successful Faith Students, U.S. Army, April 22, 2014. 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.

In late 2007 and early 2008, I participated in several informational calls to form a Young Lawyers for Obama Chapter in Shreveport, Louisiana and I was listed as the point of contact. I did not perform any tasks for the organization.

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

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

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

I served as a clerk to the Honorable Scott J. Crichton and the Honorable Jeanette G. Garrett on the First Judicial District Court of Louisiana from 2005 to 2006.

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

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

2006 – 2019

Blanchard, Walker, O'Quin & Roberts (A Professional Law Corporation)

333 Texas Street, Suite 700

Shreveport, Louisiana 71101

Associate (2006 – 2014)

Shareholder and Director (2014 – 2019)

2019 – present

United States Attorney's Office

Western District of Louisiana

300 Fannin Street, Suite 3201

Shreveport, Louisiana 71101

Assistant United States Attorney (2019 – present)

Deputy Chief, Civil Division (2020)

Chief, Civil Division (2020 – 2022)

First Assistant United States Attorney (2022 – present)

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

I have 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.

During my time with Blanchard Walker, I had a diverse litigation practice in state and federal court focused primarily on tort defense, consumer bankruptcy work for creditors, and collection work. I also handled some municipal work, with particular focus on zoning and land use.

When I joined the United States Attorney's Office in 2019, my practice focused initially on defense of actions brought against federal agencies in areas of tort, employment, and challenges to agency actions. Shortly after I joined the office, I also began to handle affirmative work on behalf of federal agencies, bringing actions against other parties asserting claims on behalf of the federal government.

In 2022, I was appointed First Assistant United States Attorney. In that role, I reduced my caseload to assist the United States Attorney in supervising the Administrative, Criminal, Civil, and Appellate Divisions of the office. I oversee civil litigation, as well as the prosecution of federal crimes, including firearm and drug cases, gang violence, human trafficking, white collar crime, public corruption, terrorism, and civil rights violations.

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

During my time with Blanchard Walker, my typical clients in tort actions were self-insured businesses until approximately 2017, when some of my tort clients began to refer matters to insurance companies. My consumer bankruptcy work was primarily for local credit unions, and my collection work was primarily for a local casino.

My practice in the United States Attorney's Office has been on behalf of the United States and federal agencies.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of

your appearances in court varied, describe such variance, providing dates.

My practice has been approximately 95 percent litigation. I have appeared in court frequently over the course of my career. I appeared in court on a monthly basis while in private practice and when I initially joined the U.S. Attorney's Office. The frequency of my court appearances has decreased to a quarterly basis since I was promoted to Deputy Civil Chief, Civil Chief, and now First Assistant United States Attorney.

i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 60% |
| 2. state courts of record:  | 40% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 95% |
| 2. criminal proceedings: | 5%  |

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

I have tried nine cases to verdict, judgment, or final decision. Seven of these cases I tried as sole counsel. I have tried one case as a second chair and one case as co-counsel.

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 22% |
| 2. non-jury: | 78% |

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. *Okey v. United States*, 20-CV-00119 (W.D. La.) (Cain, J.)

I was co-counsel for the government in this tort action brought by plaintiffs seeking damages arising from a motor vehicle accident with a postal worker. The government argued that the postal worker was not at fault and, in the alternative, that the accident did not cause the extent of damages claimed by the plaintiffs. I divided the witnesses with my co-counsel for the three-day bench trial. I cross-examined all three plaintiffs and their lay witnesses. I also examined the postal driver in our case-in-chief. The trial court ruled in favor of the plaintiffs and awarded them a cumulative amount of \$1,479,747 in damages.

Dates of Representation: 2020 – 2022

Co-Counsel:

Edwin Henry Byrd, IV  
United States Attorney's Office  
Western District of Louisiana  
300 Fannin Street, Suite 3201  
Shreveport, LA 71101  
(318) 676-3600

Opposing Counsel:

Justin Todd Morales  
David Harmon Hanchey  
Townesley Law Firm  
3102 Enterprise Boulevard  
Lake Charles, LA 70601  
(337) 478-1400

2. *Singh v. United States*, 20-CV-00763 (W.D. La.) (Drell, J.)

I was sole defense counsel for the government in this immigration habeas action, in which the petitioner sought his release from detention and an injunction against his imminent removal. The petitioner was detained at an Immigration and Customs Enforcement facility in the Western District of Louisiana where a flight had been chartered to remove him from the United States. He argued that his removal should be stayed because he was in the process of pursuing a provisional waiver of his removal.

order to stay with his family in the United States. The government argued that the court lacked jurisdiction in a habeas action to stay the petitioner's removal for the purpose of pursuing a collateral action, such as a provisional waiver application. The court agreed with the government and dismissed the habeas petition for lack of jurisdiction. The petitioner did not appeal the ruling because his removal was delayed for unrelated administrative reasons and he was transferred from the Western District of Louisiana to an Immigration and Customs Enforcement facility in New York.

Dates of Representation: 2020

Opposing Counsel:

Allyson Rachel Page  
Immigration Svcs & Legal Advocacy  
2714 Canal Street, Suite 300  
New Orleans, LA 70119  
(504) 354-1835

Yi Zhao  
Pollack Pollack et al  
225 Broadway, Suite 307  
New York, NY 10007  
(212) 233-8100

3. *McConathy et al. v. Walmart*, 17-CV-00622 (W.D. La.) (Doughty, J.)

I took over this trip and fall case as sole counsel for the defense two weeks before the jury trial, when the prior lead attorney left our firm. I attempted settlement negotiations while simultaneously getting up to speed on the case and preparing for trial after the trial judge denied the motion to continue the trial. The parties stipulated to liability and tried the case on damages only. After a two-day trial the jury returned a favorable defense verdict.

Dates of Representation: 2017 – 2018

Opposing Counsel:

Cole Boyett Smith  
James H. Colvin  
Colvin, Smith & McKay  
900 Market Street, Suite 301  
Shreveport, LA 71101  
(318) 429-6770

4. *Jack v. Eldorado Casino*, 580,048 (First Judicial District Court of Louisiana) (Lafitte, J.)

I was sole defense counsel in this tort action in which the plaintiff claimed she injured her back when the defendant's employee spilled hot coffee on her while she was sitting at a slot machine. The defendant argued that there was no liability and, alternatively, that the employee's actions did not cause the nature or extent of damage alleged by the plaintiff. After a four-day jury trial the jury found in favor of the plaintiff and awarded her damages in the amount of \$1,429,928. I left private practice while the case was on appeal and new counsel enrolled. The appellate court affirmed.

Dates of Representation: 2014 – 2018

Opposing Counsel:

Anthony Impastato  
Frischhertz and Impastato, LLC  
1140 Saint Charles Avenue  
New Orleans, LA 70130  
(504) 523-1500

Ernest Perry  
Ernest R Perry, Jr LLC  
440 East Washington Street  
Shreveport, LA 71104  
(318) 629-1379

5. *Cropprue v. Michael*, 569,969 (First Judicial District Court of Louisiana) (Pitman, J.), *aff'd in part*, 49,631 (La. App. 2 Cir. 3/4/15); 162 So.3d 645 (Williams, Drew, Lolley, JJ.), *writ denied*, (La. 6/1/2015); 171 So.3d 262

I was sole counsel for the plaintiff in this suit to confirm title acquired by the plaintiff through a tax sale. The defendants were the current possessors of the property and the estates of the deceased tax debtors who owned the property at the time of the tax assessment giving rise to the subject tax sale. The defendants argued that the title should not be confirmed because they did not receive notice of the delinquent tax debt that gave rise to the tax sale and they did not receive notice of the sale of the property to the plaintiff. The plaintiff argued that actual receipt of either notice was not required under Louisiana law because the government published notice of the delinquent tax debt and of the sale to the plaintiff and the plaintiff mailed notice to the defendants' last known addresses. The trial court granted the plaintiff's motion for summary judgment confirming title. The appellate court affirmed that notice of the tax debt and tax sale was sufficient but remanded the case to determine the rights of the current possessors of the property. The Louisiana Supreme Court denied the defendants' application for review. I was sole counsel on appeal. New counsel enrolled for the plaintiff after I left private practice and the case is still pending at the trial court.

Dates of Representation: 2013 – 2018



Opposing Counsel:

Richard Hiller  
Shuey Smith  
631 Milam Street, Suite 200  
Shreveport, LA 71101  
(318) 221-8671

6. *Stonecipher v. Caddo Parish*, 583,388 (First Judicial District Court of Louisiana) (Lafitte, J.), *aff'd in part*, 51,148 (La. App. 2 Cir. 4/7/17); 219 So.3d 1187 (Williams, Drew, Moore, JJ.), *reh'g denied*, (5/11/17), *writ denied*, (La. 10/9/2017); 227 So.3d 830

In this action for declaratory and injunctive relief, the plaintiff challenged the legality of local ordinances that authorized Parish elected officials to participate in the public employees' retirement system, medical benefits, life insurance, salary increases, mileage reimbursements, and travel allowances. The plaintiff sought a judgment declaring the ordinances unconstitutional and injunctive relief to stop future payments and the return of funds received by the elected officials.

The plaintiff named the Parish elected officials and executive employees as defendants individually. He also named the Caddo Parish Commission, the body on which the elected officials served, and the Parish of Caddo as defendants. I served as co-counsel for the Caddo Parish Commission and the Parish of Caddo.

I led the discovery efforts and the related litigation in the trial court. The Parish of Caddo argued that the scope of discovery should be limited to the legal issues before the court and not the amount of benefits accrued or paid, which is information the plaintiff previously sought to obtain through public records requests. The trial court deferred ruling on the discovery disputes and instead ruled on the merits of the legal issues that were handled by my co-counsel. Specifically, the trial court held that the plaintiff had the right to seek a declaratory judgment regarding the legality of the subject ordinances. However, the trial court dismissed the plaintiff's claims against the individual defendants, as well as the plaintiff's claims for injunctive relief to stop future payments and the return of funds paid. The appellate court reversed the trial court's ruling in part and held that the plaintiff had the right to seek injunctive relief only as to future payments. The Louisiana Supreme Court denied the plaintiff's request for review and the plaintiff did not continue to pursue the case.

Dates of Representation: 2015 – 2017

Co-Counsel:

M. Thomas Arceneaux  
615 Jordan Street

Shreveport, LA 71101  
(318) 222-6493

Opposing Counsel:

J. Whitney Pesnell  
The Pesnell Law Firm, APLC  
400 Travis Street, Suite 1100  
Shreveport, LA 71101  
(318) 226-5577

7. *Primrose v. Walmart*, 70,738 (Twenty-Sixth Judicial District Court of Louisiana) (Bleich, J.), *aff'd*, 48,370 (La. App. 2 Cir. 10/2/13); 127 So.3d 13 (Brown, Stewart, Moore, JJ.), *reh'g denied*, (11/14/13)

I was lead defense counsel in this tort action for damages arising from a trip and fall over a pallet at a Walmart containing a display of watermelons. In a motion for summary judgment, the defendant argued that the action should be dismissed because the pallet was marked with warnings and Louisiana law does not impose a duty to protect against open and obvious hazards. The trial court granted the defendant's motion and dismissed the case. The appellate court affirmed and denied rehearing.

Dates of Representation: 2010 – 2013

Opposing Counsel:

J. Allen Cooper  
The Law Office of Allen Cooper, LLC  
551 Kings Highway  
Shreveport, LA 71104  
(318) 865-5291

8. *Mitchell v. Cooper*, 129,775 (Twenty-Sixth Judicial District Court of Louisiana) (Stinson, J.), *aff'd*, 48,125 (La. App. 2 Cir. 7/24/13); 121 So.3d 736 (Drew, Moore, Lolley, JJ.)

I was sole counsel for the plaintiff in this suit to divide co-owned property. The plaintiff argued that the court should order the division of the property by sale because the property could not be divided by creating separate tracts without diminishing its overall value. There were several defendants, some of whom represented themselves. All of the defendants had received their interest in the property by heirship or by purchasing property from other heirs. Some of the defendants argued against the sale of the property, asserting that the property should instead be divided into separate tracts. After a bench trial, the court ordered the sale of the property and division of the proceeds according to each party's ownership interest. The appellate court affirmed.

Dates of Representation: 2009 – 2013

Opposing Counsel (for the only represented defendants):

Carl H. Franklin  
The Law Office of Carl H. Franklin  
910 Pierremont Road, Suite 410  
Shreveport, LA 71106  
(318) 429-6822

9. *Partin v. Walmart*, 09-CV-02229 (W.D. La.) (Foote, J.)

I was co-counsel for the defense in this wrongful death and survival action. The plaintiff's mother died after being struck by shelving at Walmart. I led the store investigation of the incident. I also led discovery, which included significant corporate and lay depositions and written discovery. I contributed to the pretrial filings, including our third-party demand against the manufacturer of the shelving. I assisted in the preparation and handling of mediation, where the case settled. I was also heavily involved in the motion practice that followed mediation regarding the confidentiality of the settlement agreement and a protective order to prevent the release of the video of the incident after the dismissal of the case.

Dates of Representation: 2009 – 2011

Co-Counsel:

W. Michael Adams  
Blanchard, Walker, O'Quin & Roberts  
333 Texas Street, Suite 700  
Shreveport, LA 71101  
(318) 221-6858

Opposing Counsel:

Robert A Breithaupt  
Breithaupt DuBos & Wolleson  
P.O. Box 14106  
Monroe, LA 71207  
(318) 654-8568

Nicholas D Doucet  
Doucet Law  
556 Jefferson Street, Suite 200  
Lafayette, LA 70501  
(337) 593-4101

10. *Jordan v. Walmart*, 09-CV-00604 (W.D. La.) (Hicks, J.)

I was co-counsel for the defense in this slip-and-fall action. I led the discovery and the filing of a motion for summary judgment seeking the dismissal of this action on the grounds that the plaintiff could not establish an essential element of her claim: that the defendant knew or should have known of the complained-of condition giving rise to the fall. The trial court granted the motion and dismissed the action.

Dates of Representation: 2009 – 2010

Co-Counsel:

Paul Adkins  
Liskow & Lewis  
450 Laurel Street, Suite 1601  
Baton Rouge, LA 70801  
(225) 341-4684

Opposing Counsel:

Albert Joseph Rebennack, Jr.  
Law Office of Albert J. Rebennack, Jr.  
2325 North Hullen, Suite 104  
Metairie, LA 70001  
(504) 831-1203

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have been a member of the Louisiana Committee on Bar Admissions since 2019 and I am one of three members of the Committee who serve on its Character and Fitness Panel. Our role on the Character and Fitness panel is to determine whether applicants to the Louisiana Bar, who have otherwise demonstrated the base level of knowledge to pass the Bar examination, meet the high standard of fidelity to justice that is expected of lawyers by the public. Determining whether to recommend an applicant to the Louisiana Supreme Court for admission to our Bar is one of the most important legal activities I have undertaken as a member of this profession.

I served as a member of the Louisiana Judiciary Commission from 2011 to 2015. This nine-member body is the exclusive authority for the review of complaints against Louisiana judicial officers. The Louisiana Supreme Court is the only authority that can

impose discipline on Louisiana judicial officers, but it can do so only upon the recommendation of the Judiciary Commission. I served as Vice Chair and Chair of this body. As a leader of the Judiciary Commission, I made it a priority to reach out to judges across the state to not only raise awareness about common disciplinary issues, but to also build confidence in the disciplinary process among judges.

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).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will recuse myself from any civil litigation referred to or initiated by the United States Attorney's Office for the Western District of Louisiana while I was serving as Deputy Chief and Chief of the Civil Division, as I was responsible for the supervision of all civil litigation in those roles. I will also recuse myself from all civil litigation and all criminal matters that were referred to or initiated by the United States Attorney's Office for the Western District of Louisiana during my tenure as First Assistant United States Attorney. As First Assistant United States Attorney, I have been involved in the supervision of all criminal and civil matters handled by the office.

With respect to financial holdings, I will actively screen cases for potential financial recusal questions, disqualifying myself anytime I have a financial interest in the subject matter of the controversy, in a party to the proceeding, or in any other interest that could substantially be affected by the outcome of the proceeding.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other applicable laws, rules, practices, judicial decisions, or Judicial Conference opinions.

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

During my tenure at the United States Attorney's Office I have not engaged in the practice of law outside of my government service. However, while I have been with the United States Attorney's Office, I have been a member and officer of the Booth-Politz Inn of Court. Through the Inn of Court, I have supported the efforts of fellow Inn of Court members to perform pro bono work through an annual program named Wills for Heroes, in which volunteer attorneys provide wills, living wills, and medical powers of attorney to first responders.

For several years before I joined the United States Attorney's Office, I volunteered on an annual basis for the Louisiana State Bar Association's state-wide Ask-A-Lawyer Legal Clinic called "Lawyers in Libraries." Through this program I partnered with another

lawyer to answer legal questions from community members in the Claiborne Parish Public Library in Homer, Louisiana.

I also participated in Wills for Heroes programs as a member of the Young Lawyers Division Council for the Louisiana State Bar Association and the Young Lawyers Section of the Shreveport Bar 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.

On March 1, 2023, I was contacted by Senator Bill Cassidy's office inquiring if I would be interested in serving as a federal district judge, and I responded that I would. On March 2, 2023, I was contacted by Senator John Kennedy's office and I expressed my interest in serving as a federal district judge. On or around March 6, 2023, I was contacted by Senator Cassidy's office informing me that the White House Counsel's Office would contact me to schedule an interview. I was interviewed by attorneys from the White House Counsel's Office on March 8, 2023. I interviewed with Senators Cassidy and Kennedy on March 15, 2023. On March 17, 2023, I was contacted by the White House Counsel's Office and the Office of Legal Policy at the Department of Justice regarding the vetting process. Since that time, I have been in contact with officials from the Office of Legal Policy. On June 7, 2023, the President announced his intent to nominate me.

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

No.

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Philip S. Hadji

Philip Serge Hadji  
Philip Andrew Serge Hadji-Mihaloglou  
Philip Andrew Serge Hadji

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

Judge, United States Court of Federal Claims

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

Office of the General Counsel  
Department of the Navy  
Naval Litigation Office  
720 Kennon Street, Southeast, Room 233  
Washington, DC 20374

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

1981; Cleveland, Ohio

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

2010 – 2011, The George Washington University Law School; LL.M. in Government Procurement Law, 2011

2006 – 2009, Case Western Reserve University School of Law; J.D., 2009

2000 – 2004, Hamilton College; A.B. (*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.

2022 – present  
Office of the General Counsel  
Department of the Navy  
Naval Litigation Office  
720 Kennon Street, Southeast, Room 233  
Washington, DC 20374  
Senior Trial Attorney

2020 – 2022  
Office of the General Counsel  
Department of the Navy  
Naval Information Warfare Systems Command (NAVWAR)  
1325 10th Street, Southeast  
Washington, DC 20374  
Deputy Counsel, D.C. Office (2021 – 2022)  
Associate Counsel (2020 – 2021)

2016 – 2020  
Office of the General Counsel  
Department of the Navy  
Acquisition Integrity Office  
720 Kennon Street, Southeast, Room 214  
Washington, DC 20374  
Associate Counsel and Division Director (2017 – 2020)  
Assistant Counsel (2016 – 2017)

2011 – 2016  
Office of the General Counsel  
Department of the Navy  
Naval Facilities Engineering and Expeditionary Warfare Center (EXWC)  
1000 23rd Avenue  
Port Hueneme, California 93043  
Assistant Counsel

2011  
Acquisition and Logistics Division  
Office of the General Counsel  
Department of Defense  
1600 Defense Pentagon  
Washington, DC 20301  
Legal Intern

2011  
Special Counsel  
1920 L Street, Northwest  
Suite 550  
Washington, DC 20036  
Attorney

2010  
Legal Source  
2020 K Street, Northwest, Suite 700  
Washington, DC 20006  
Attorney

2008  
The Honorable Charles P. Kocoras  
United States District Court  
219 South Dearborn Street  
Chicago, Illinois 60604  
Extern

2007  
Office of the Solicitor  
United States Department of Labor  
200 Constitution Avenue, Northwest  
Washington, DC 20210  
Legal Intern

2004 – 2006  
Office of U.S. Senator Robert C. Byrd  
311 Hart Senate Office Building  
Washington, DC 20510  
Legislative Correspondent

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.

Department of the Navy Superior Civilian Service Award (2021)

Department of the Navy Meritorious Civilian Service Award (2020)

NAVFAC Command Coin (2016)

EXWC Command Coin (2016)

American Bar Association Public Contract Law Section Writing Award (2011)

Case Western Reserve University School of Law  
 Editor-in-Chief, *Case Western Reserve Journal of International Law*  
 Law School Leadership Award (2009)  
 Cox Center International Law Award (2009)

Hamilton College  
 President, Class of 2004  
 Pi Sigma Alpha Political Science Honorary Society (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 2010 – 2011)

10. **Bar and Court Admission:**

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

Maryland, 2009

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.

None.

11. **Memberships:**

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

conferences, or publications.

National Contract Management Association, Student Member (approximately 2010 – 2012)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, the above organization does not currently discriminate and did not formerly discriminate on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Death Benefits for Servicemembers: A Case Study on the Department of Veterans Affairs and its Life Insurance Contract, *Public Contract Law Journal*, 41 Pub. Cont. L. J. 777 (Summer 2012). Copy supplied.

The Case for Kurdish Statehood in Iraq, *Case Western Reserve Journal of International Law*, 41 Case W. Res. J. Int'l L. 267 (2009). Copy supplied.

With Michael P. Scharf, Foreword and Dedication, *Case Western Reserve Journal of International Law*, 41 Case W. Res. J. Int'l L. 273 (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.

September 24, 2021: Panelist, *Making an Impact: Panel of Former Journal of International Law Editors*, Case Western Reserve University School of Law, Cleveland, Ohio. Transcript supplied.

August 23, 2017: Speaker, *Suspension and Debarment: What You Need to Know*, 29th Annual National Defense Industrial Association (NDIA) Department of the Navy (DON) Gold Coast Small Business Procurement Event, San Diego, California. Presentation and video supplied.

April 5, 2017: Panelist, *Suspension and Debarment: What You Need to Know*, Department of the Navy (DON) Office of Small Business Programs (OSBP), Small Business Forum, Navy League of the United States Sea-Air Space Exposition, National Harbor, Maryland. Presentation, video, and press coverage 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.

None.

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 volunteered as a booker for presidential campaign surrogates in the radio division of the Democratic National Committee Headquarters (2004).

I volunteered as a get-out-the-vote caller for the re-election campaign of U.S. Senator Robert C. Byrd (2006).

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

- a. Describe chronologically your law practice and legal experience after graduation

from law school including:

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

2010  
Legal Source  
2020 K Street, Northwest, Suite 700  
Washington, DC 20006  
Attorney

2011  
Special Counsel  
1920 L Street, Northwest  
Suite 550  
Washington, DC 20036  
Attorney

2011  
Acquisition and Logistics Division  
Office of the General Counsel  
Department of Defense  
1600 Defense Pentagon  
Washington, DC 20301  
Legal Intern

2011 – 2016  
Office of the General Counsel  
Department of the Navy  
Naval Facilities Engineering and Expeditionary Warfare Center (EXWC)  
1000 23rd Avenue  
Port Hueneme, California 93043  
Assistant Counsel

2016 – 2020  
Office of the General Counsel



Department of the Navy  
 Acquisition Integrity Office  
 720 Kennon Street, Southeast, Room 214  
 Washington, DC 20374  
 Associate Counsel and Division Director (2017 – 2020)  
 Assistant Counsel (2016 – 2017)

2020 – 2022  
 Office of the General Counsel  
 Department of the Navy  
 Naval Information Warfare Systems Command (NAVWAR)  
 1325 10th Street, Southeast  
 Washington, DC 20374  
 Deputy Counsel, D.C. Office (2021 – 2022)  
 Associate Counsel (2020 – 2021)

2022 – present  
 Office of the General Counsel  
 Department of the Navy  
 Naval Litigation Office  
 720 Kennon Street, Southeast, Room 233  
 Washington, DC 20374  
 Senior Trial Attorney

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

I have not served as a mediator or arbitrator.

b. Describe:

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

In 2010 and 2011, I worked as an attorney for Legal Source and Special Counsel. In these roles, I conducted document review for commercial litigation matters involving large-scale discovery.

Since 2011, I have served as an attorney in the Department of the Navy Office of the General Counsel with a practice focused on government contract law. In this time, I have developed extensive experience in a wide range of government contract matters, including bid protest litigation, litigation of contract claims, False Claims Act litigation, investigations, suspension and debarment, contract awards, contract performance issues, energy contracts, IT infrastructure and service

contracts, and data rights issues. I have been the lead counsel or co-lead counsel on several high-profile matters for the Navy, including debarment actions, bid protests at the Government Accountability Office, contract claims at the Armed Services Board of Contract Appeals, and substantial contract awards. I have also been the lead or co-lead for the Navy on matters where the Department of Justice has intervened on behalf of the government in district courts throughout the United States.

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

Since joining the Department of the Navy Office of the General Counsel in 2011, my only client has been the Department of the Navy. While working at Legal Source and Special Counsel, my clients were large companies.

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

From 2022 to present, while serving as Senior Trial Attorney in the Naval Litigation Office of the Department of the Navy Office of the General Counsel, I frequently appear in matters before the Armed Services Board of Contract Appeals (a trial-level forum from which matters are directly appealed to the Court of Appeals for the Federal Circuit). Prior to my current position, I occasionally appeared in proceedings at the Armed Services Board of Contract Appeals and the Government Accountability Office (alternate fora from the Court of Federal Claims for government contract matters) and spent a large percentage of my time providing advice and counsel. In 2020, I supported the Department of Justice (DOJ) in a matter at the Court of Federal Claims. From 2016 to 2020, while serving in the Acquisition Integrity Office of the Department of the Navy Office of the General Counsel, I supported DOJ as lead counsel for the Navy in False Claims Act matters that DOJ handled in district courts throughout the United States, which included preparing recommendations regarding intervention in qui tam litigation under the False Claims Act, settlement decisions, and dismissal decisions.

- i. Indicate the percentage of your practice in:

|                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 20% |
| 2. state courts of record:  | 0%  |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 80% |

- ii. Indicate the percentage of your practice in:

|                       |      |
|-----------------------|------|
| 1. civil proceedings: | 100% |
|-----------------------|------|

2. criminal proceedings: 0%

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

I have tried four cases to final decision at the Armed Services Board of Contract Appeals and the Government Accountability Office. I was the lead attorney for two of the cases and the co-lead attorney for two of the cases. Additionally, I am currently the lead attorney on six matters pending before the Armed Services Board of Contract 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 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:

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Appeal of Herren Associates, Inc.*, Armed Services Board of Contract Appeals, No. 62706, March 29, 2022, Judge Michael N. O'Connell, available at <https://www.asbca.mil/Decisions/2022/62706%20Herren%20and%20Associates,%20Inc.%204.22.22%20Redacted%20Decision.pdf>.

I represented the Department of the Navy in this matter in 2021. The litigation involved the appeal of a Department of the Navy Contracting Officer's final decision denying a

claim submitted for payment by Herren Associates, Inc. (“Herren”). In 2004, the Naval Information Warfare Systems Command awarded Herren “an indefinite delivery, indefinite quantity” contract for the provision of engineering, technical, and programmatic support services. Although performance of the contract began in 2009, Herren waited until 2019 to submit a claim arguing that it was owed higher fees and payments for leased facilities. Herren contended, among other things, that the Navy had requested the services of more senior personnel than those offered in Herren’s original proposal, leading to increased labor costs. Along with the lead counsel for the Navy, I worked on discovery and the Navy’s motion for summary judgment. Following discovery, I assisted lead counsel with drafting a motion for summary judgment based on the statute of limitations. Herren argued that, because its claim was under a “cost reimbursement” contract, it was permissible to wait 10 years after performance commenced to submit its claim (under a six-year statute of limitation) based on the contract terms. However, the Board agreed with the Navy’s argument that the contract provided no excuse for Herren’s delay in seeking a higher fee and there was no contract language that provided, as Herren argued, for an increase in the fee if the labor mix changed. Accordingly, the Board granted summary judgment in the Navy’s favor.

Counsel for Government

Libbi J. Finelsen  
Department of the Navy  
1000 Navy Pentagon, Room 4D652  
Washington, DC 20350  
(703) 614-1994

Counsel for Appellant, Herren Associates

Eden Brown Gaines  
Browns Gaines, LLC  
10 G Street, Northeast, Suite 600  
Washington, DC 20002  
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2. *Perspecta Enterprise Solutions, LLC v. United States and Leidos, Inc.*, Court of Federal Claims, No. 20-814, Dec. 17, 2020, available at [https://ecf.cofc.uscourts.gov/cgi-bin/show\\_public\\_doc?2020cv0814-82-0](https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2020cv0814-82-0).

In 2020, I represented the Department of the Navy in the above-captioned matter. This was a bid protest in the United States Court of Federal Claims before Judge Loren A. Smith. It was the second bid protest to the Department of the Navy’s award of the contract, with the GAO denying the first protest in June 2020. Specifically, Perspecta filed a bid protest complaint regarding NAVWAR’s award of a \$7 billion contract to Leidos, Inc. for the supplies and services necessary to operate the Navy’s enterprise-wide information technology networks. Perspecta contended that Leidos gained an unfair competitive advantage, argued that the Navy’s waiver of an organizational conflict of interest was unreasonable, and challenged the agency’s evaluation of offerors’ proposals, including the Navy’s technical evaluations, the fairness of the Navy’s discussions with

offerors, the Navy's cost evaluation, and the resulting award decision. I worked on the cost/price-related arguments and responding to the allegations of improper discussions. I supervised a team of the Navy's cost experts and coordinated with counsel for the intervenor and its team of cost experts. I also led the Navy's document production efforts. Unlike the GAO litigation, which was based primarily on an administrative record that only included the evaluation of Perspecta, this litigation also included the record pertaining to the evaluation of Leidos. As such, I developed additional cost/price arguments defending the reasonableness of the Navy's decision. The court denied the bid protest in December 2020, agreeing with the Navy and Leidos on all issues. Perspecta later merged with Peraton, Inc.

Counsel for Government

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Counsel for Intervenor, Leidos

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(202) 639-7130

Counsel for Protester Perspecta

Daniel R. Forman  
Crowell and Moring  
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3. *Matter of: Perspecta Enterprise Solutions, LLC, B-418533.2; B-418533.3, Comp. Gen.*, June 17, 2020, available at <https://www.gao.gov/assets/b-418533.2.pdf>.

In 2020, I represented the Department of the Navy, Naval Information Warfare Systems Command (“NAVWAR”) in a contract protest (bid protest) before the GAO. The protester, Perspecta Enterprise Solutions, LLC (“Perspecta”), filed a bid protest against a contract awarded to Leidos, Inc. by NAVWAR for the supplies and services necessary to operate the Navy’s enterprise-wide information technology networks. Losing the contract award to Leidos displaced Perspecta, which impacted Perspecta significantly because the contract was worth approximately \$7 billion and represented about 20 percent of Perspecta’s annual revenue. Perspecta contended that Leidos gained an unfair competitive advantage based on its hiring of a former NAVWAR official and that the Navy’s waiver of an organizational conflict of interest was not reasonable. Perspecta also challenged the agency’s evaluation of other offerors’ proposals, including the Navy’s technical evaluations, the fairness of the Navy’s discussions with offerors, the Navy’s cost evaluation, and the resulting award decision. The GAO denied the protest, siding with the Department of the Navy and the intervenor, Leidos. Perspecta later merged with Peraton, Inc. I served as the co-lead attorney of a ten-attorney team and was responsible for the cost/price-related arguments and responding to the allegations of improper discussions. I supervised a team of the Navy’s cost experts and coordinated with counsel for the intervenor and its team of cost experts. The GAO decision was prepared by Sarah T. Zaffina, Alexander O. Levine, and Jennifer D. Westfall-McGrail.

Counsel for the Government

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Counsel for Protester, Perspecta

Daniel R. Forman  
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 1001 Pennsylvania Avenue, Northwest  
 Washington, DC 20004  
 (202) 624-2504

4. *United States ex rel. Ameliorate Partners, LLP v. ADS Tactical, Inc. et al.*, Case No. 13-cv-1880 (D.D.C.) (Judge Collyer).

I was the Department of the Navy's supervisory attorney for this False Claims Act matter litigated by DOJ against ADS, Inc., and related entities (collectively "ADS"). The Navy was a victim of the alleged fraud. The complaint alleged that ADS knowingly conspired with and caused purported small businesses to submit false claims for payment in connection with fraudulently-obtained small business contracts. The complaint further alleged that ADS, together with several purported small businesses that it controlled, fraudulently induced the government to award certain small business set-aside contracts by misrepresenting that it met certain eligibility requirements. ADS and its affiliates allegedly concealed the companies' affiliations with ADS and knowingly made misrepresentations concerning the size of the businesses and their eligibility as service-disabled or 8(a) qualified businesses. Finally, ADS allegedly engaged in illegal bid rigging schemes that inflated or distorted prices charged to the government under certain contracts. ADS agreed to pay \$16 million and ADS's majority owner and former Chief Executive Officer agreed to pay \$20 million to settle the allegations. As the Navy's supervisory attorney for this matter, I worked on the Navy's settlement position, which was done in coordination with the lead trial attorney at DOJ and in coordination with the appropriate personnel within the Department of the Navy. My representation in this matter was from 2017 to 2019.

Counsel for the Government

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 District of Columbia  
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Opposing Counsel

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 815 Connecticut Avenue, Northwest  
 Washington, DC 20006  
 (202) 452-7019

5. *United States ex rel. Rudolph v. Inchcape Shipping Services Holdings Limited, et al.*, No. 1:10-cv-01109 (D.D.C.) (Judge Walton).

From 2017 to 2018, I was the lead attorney for the Department of the Navy in this False Claims Act matter litigated by DOJ against Inchcape Shipping Services Holdings Limited. The complaint alleged that Inchcape and some of its subsidiaries (collectively, “Inchcape”) violated the False Claims Act by knowingly overbilling the Navy for ship husbanding services from 2005 to 2014. As a ship husbanding services provider, Inchcape arranged for the provision of goods and services to Navy ships at ports in several regions throughout the world. Inchcape’s services typically included the provision of food and other subsistence items, arrangement of local transportation, waste removal, telephone services, ship-to-shore transportation, and force protection services. The lawsuit alleged that Inchcape knowingly submitted false invoices overstating its services, over-billed, and double-billed for certain goods and services. I supported the lead attorney at the DOJ by providing information about relevant Navy contracts, damages, and about Inchcape’s compliance with an Administrative Agreement (“AA”) requiring the company to implement a more robust ethics and compliance program. As part of the Navy’s internal enforcement of the AA, executed prior to the conclusion of this matter, I made site visits to Inchcape facilities to help track the progress of Inchcape’s compliance with the AA. Inchcape filed a motion to dismiss in April 2016, which was pending when the company agreed in June 2018 to settle the matter for \$20 million. I drafted the Navy’s memorandum establishing its settlement position and coordinated approval of the settlement within the Navy, including obtaining approval from the Secretary of the Navy.

Counsel for Government  
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Civil Division  
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Counsel for Defendant, Inchcape Shipping Services Holdings Limited  
Craig A. Holman  
Arnold & Porter Kaye Scholer LLP  
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Washington, DC 20001  
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J. Kirk Ogrosky  
Goodwin Procter, LLP  
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(202) 346-4379

6. *United States ex rel. Moldex-Metric v. 3M Company*, Case No. 3:16-cv-1533-MBS (D.S.C.) (Judge Coggins).



I was the Department of the Navy's supervisory attorney for this False Claims Act matter litigated by DOJ against 3M Company ("3M"). The Navy was a victim of the alleged fraud. 3M allegedly violated the False Claims Act by selling or causing to be sold defective earplugs to the Department of Defense. Specifically, the United States alleged that 3M, and its predecessor Aeero Technologies, Inc., knew dual-ended Combat Arms Earplugs Version 2 were too short for proper insertion into users' ears and that the earplugs could loosen imperceptibly and therefore did not perform well for certain individuals. The United States further alleged that 3M did not disclose this design defect to the military. 3M agreed to pay \$9.1 million to resolve the allegations. As the Navy's supervisory attorney for this matter, I worked on the Navy's settlement position in coordination with the DOJ trial attorney and in coordination with the appropriate personnel within the Department of the Navy. My representation in this matter was from 2017 to 2018.

Counsel for the Government

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Opposing Counsel

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7. *Appeal of Ameresco Select, Inc.*, Armed Services Board of Contract Appeals, Nos. 59638, 60136, 60526, available at <https://www.asbca.mil/Decisions/2017/59638,%2060136,%2060526%20Ameresco%20Select,%20Inc.%209.12.17.pdf> (dismissal of Count II) (Judge Terrence Hartman), <https://www.asbca.mil/Decisions/2022/59638%20et%20al.%20Ameresco%20Select,%20Inc.%207.11.22%20Decision.pdf> (denial of cross-motions for summary judgment) (Judge Michael T. Paul).

This matter involved a delivery order issued under an indefinite delivery/indefinite quantity contract awarded to a predecessor company of appellant, Ameresco Select, Inc. (ASI). The purpose of this contract was an energy savings performance project at Naval Station, Rota, Spain. ASI filed a multi-part complaint alleging that the Navy owed ASI money for construction of a temporary meteorological tower and related 12-month collection of wind data. ASI also alleged it was owed delay-related and design change costs associated with fire alarm and fire sprinkler systems. I supported the lead attorney for the Navy in discovery at the beginning of the litigation, which included identifying and producing documents; identifying and intervening potential witnesses; reviewing and providing comments on the answer; drafting an analysis of key contractual terms

referenced in the complaint; reading, reviewing, and drafting responses to interrogatories. I also worked with the lead trial attorney and the contracting officer to fix a jurisdictional issue regarding the final decision of the contracting officer. Finally, I worked with lead trial attorney and contracting officer to reach a settlement agreement for a portion of ASI's appeal very shortly after the litigation commenced. Following ASI's decision to withdraw a portion of the complaint related to the temporary meteorological tower and data following discovery, and the ASBCA's denial of cross-motions for summary judgment on the delay-related and design change issues, the parties settled the litigation. My representation in this matter was from 2014 to 2016.

Counsel for the Government

Pamela J. Nestell (retired, formerly with the Naval Litigation Office)

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8. *United States v. Weiland*, No. 14-CV-1434 (E.D. Wis.) (Judge Griesbach).

This was a civil suit filed by the United States under the False Claims Act for alleged fraud against the Navy. The defendant was the former co-owner of a company who made fraudulent representations to the Small Business Administration to certify his company under a program designed to spur development in historically underutilized business zones (HUBZone). Using that certification, the defendant and co-owner fraudulently obtained more than \$1.9 million in defense contracts, including with the Navy. The defendant fraudulently misrepresented that his company was located in a HUBZone, when it was not. The United States filed suit against the defendant in December 2015. As an attorney working on this matter for the Navy, my role was to assist the lead DOJ attorney. I helped build the case against the defendant by finding contracts and other documents in the Navy's possession to show that his company was not located in a HUBZone. I also identified and interviewed witnesses for the United States (Navy employees) who could corroborate documents and emails, and who had physically been to a company facility. After mediation, the United States reached a favorable settlement, and then-Chief Judge Griesbach entered a consent judgment in the United States' favor in February 2017. In addition, the defendant pleaded guilty to a felony offense. My representation in this matter was from April 2015 to April 2016.

Counsel for the Government

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Counsel for Defendant (Weiland)

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Counsel for Defendant's Co-Owner (Shah)

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9. *Appeal of Sacred Power Corporation*, Armed Services Board of Contract Appeals, No. 60083, Judge Mark N. Stempler, available at <https://www.asbca.mil/Decisions/2016/60083%20Sacred%20Power%20Corporation%203.1.16.pdf>.

This case arose from Sacred Power Corporation's performance on a Navy contract for the design and installation of a renewable energy fueling station (photovoltaic carports) at Joint Base Pearl Harbor Hickam. The contract was awarded by the Naval Facilities Engineering and Expeditionary Warfare Center's contracting office, where I served as the lead acquisition law attorney at the time of this litigation. The case was an appeal of an April 2015 contracting officer's final decision denying Sacred Power Corporation's March 2015 non-monetary claim that requested termination of a task order for convenience and a modification of appellant's performance rating. I supported the lead trial attorney for the Navy with discovery at the beginning of the litigation, which included identifying and producing documents; identifying and intervening potential witnesses; and coordinating with appropriate Navy personnel regarding the process for reviewing, revising, and changing contractor performance evaluations. I provided advice to Navy personnel on how best to deal with the litigation. I worked with the Navy's lead trial attorney and the Navy's contracting officer on drafting the parameters of the settlement and executing it via a bi-lateral modification to the contract. The case ultimately settled. My representation in this matter was from 2015 to 2016.

Counsel for the Government

Pamela J. Nestell (retired, formerly with the Naval Litigation Office)

Opposing Counsel

Craig A. Jacobson  
 Hobbs, Straus, Dean & Walker, LLP  
 215 Southwest Washington Street, Suite 200  
 Portland, OR 9720  
 (503) 242-1745

10. *Matter of: GlobalOpal, LLC*, B-408414.7; B-408414.8, Comp. Gen., Mar. 19, 2014, available at <https://www.gao.gov/assets/b-408414.7%2Cb-408414.8.pdf>.

I represented the Department of the Navy as the lead attorney in this bid protest from late 2013 to early 2014, drafting all filings. The protester, GlobalOpal, protested a contract awarded to CJSeto Support Services by the Department of the Navy, Naval Facilities Engineering Command ("NAVFAC") for enterprise operations support ("EOS") services. Among the EOS services to be provided were IT infrastructure, system monitoring and reporting, security, remote technical support, operations, and mainframe maintenance. GlobalOpal asserted that the Navy failed to conduct a price realism analysis of the awardee's proposed price and otherwise misevaluated proposals. Specifically, GlobalOpal argued that the awardee's proposed labor rates were substantially lower than the rates paid to the incumbent workforce, and that therefore the Navy should have recognized that it would be extraordinarily difficult for CJSeto to recruit and maintain personnel. The Navy countered by stating that GlobalOpal's complaint—that the agency failed to account for the risk involved in labor rates that are allegedly too low—is a challenge to the agency's failure to conduct a price realism analysis. Because the procurement was conducted on a fixed-price basis, and because the Request for Proposals did not provide for a price realism analysis, the Navy was precluded from conducting one. The RFP informed offerors that the price analysis would be limited to "whether the price is fair and reasonable." A price realism evaluation, in contrast, assesses whether an offeror's low fixed-price reflects a lack of understanding of contract requirements or risk inherent in its approach. The GAO agreed with the Navy's arguments and denied the protest. The GAO decision was prepared by Kenneth Kilgour and David A. Ashen.

Co-counsel for Government

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 Department of the Navy  
 4363 Missile Way  
 Port Hueneme, CA  
 (805) 228-8700

Counsel for Protester, GlobalOpal

Steven J. Koprince (retired)

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 an attorney with the Department of the Navy Office of the General Counsel, in addition to my litigation responsibilities, I have spent a significant part of my career providing advice and counsel on government contract matters.

From 2021 to 2022, I served as the Deputy Counsel of the Naval Information Warfare Systems Command (NAVWAR) Washington, DC Office of General Counsel, and was previously Associate Counsel from 2020 to 2021. This office provides legal advice and counsel to the Program Executive Officer for Digital Enterprise Systems (PEO Digital) and the Program Executive Officer for Manpower, Logistics and Business Systems (PEO MLB) on all acquisition law issues including contract awards, contract administration, and contract litigation. Together, these two PEOs have a combined annual budget of approximately \$3 billion and are responsible for delivering IT infrastructure and applications to approximately 800,000 Navy end users, both ashore and afloat. As Deputy Counsel, I served as the Principal Legal Advisor to PEO Digital and to PEO MLB (Acting). I was responsible for supervising four senior acquisition attorneys. I personally served as the lead attorney for more than \$1.6 billion in competitive contract awards (without protest) for an enterprise-wide cloud-based accounting system of record for the Navy. I worked on a wide range of contract performance issues including contract changes, requests for equitable adjustments, and contractor compliance with trade laws. While supporting NAVWAR, I also spent considerable time on data rights issues, including issues prior to contract award and issues that arose during contract performance.

From 2017 to 2020, I served as a Division Director and Associate Counsel in the Department of the Navy's Acquisition Integrity Office (AIO), and I was Assistant Counsel from 2016 to 2017. AIO is responsible for the coordination of all acquisition fraud matters affecting the DON. This includes accepting referrals for administrative action; interfacing with investigative agencies; coordinating remedies with acquisition entities within the DON and with the Department of Justice; implementing Administrative Agreements with contractors; and outreach to the private sector on ethics and compliance issues. At AIO, I supervised five attorneys responsible for advising senior Navy officials including the Secretary on contract fraud matters. I executed hundreds of suspensions and debarments (exclusion from government contracting), drafted administrative agreements, and coordinated administrative action with criminal investigations. I also represented the Navy on False Claims Act matters where DOJ intervened on behalf of the United States, including high-visibility cases resulting in recoveries in excess of \$100 million. I served as the Navy's representative to the Department of Defense Procurement Fraud Working Group and the Interagency Suspension and Debarment Committee. I also served on the Defense Federal Acquisition Regulation Supplement (DFARS) Committee on Suspension, Debarment, and Business Ethics.

In 2018, I worked directly for the General Counsel (GC) of the Department of the Navy (Acting) on a detail in the Pentagon. I was responsible for providing advice and counsel to the GC on discrete, controversial matters for the Secretary of the Navy. This included adjudicating legal disagreements between top legal advisors within various components of the Department and reviewing documents for the Secretary's signature.

From 2011 to 2016, I served as Assistant Counsel to the Naval Facilities Engineering and Expeditionary Warfare Center (EXWC), Port Hueneme, California. EXWC executes approximately \$1 billion annually for specialized engineering, technology development, and life-cycle management of expeditionary equipment to the Navy, Marine Corps, federal agencies, and other Department of Defense-supported commands. In this role, I was the lead acquisition attorney to a large contracting office. I was responsible for providing legal advice and counsel on a wide variety of contracts (systems, services, IT, energy, and construction), including on issues involving the award of contracts and the administration of contracts. I was the legal advisor to dozens of Source Selection Evaluation Boards and advised on dozens of Source Selection Authority Decision Documents. I litigated matters on behalf of EXWC and negotiated settlements of several contract disputes. I renegotiated favorable terms for a revenue-generating energy production contract and I provided legal advice on inter-agency energy contract issues for the Navy. I also served as lead counsel for Navy in a contracting officer's successful decision to deny a very large data rights claim under an IT development contract.

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).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

It is possible that a dispute filed in the United States Court of Federal Claims could be related to a matter that I worked on in the Office of the General Counsel of the Department of the Navy. If I am confirmed, and if that situation presents itself, I would apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine whether to recuse myself from that matter. I am unaware of any other individuals, family or otherwise, that are likely to present potential conflicts of interest.

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

If confirmed, I would consult applicable rules, canons, and decisions addressing conflicts of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and any other materials addressing conflicts of interest and appearances of conflicts of interest. In any close cases, or if any issue arose in which there was a question, I would consult other judges and any persons designated by the court or judicial organizations to provide advice on such questions as they arise.

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

Since 2011, I have worked in public service as an attorney in the Office of the General Counsel of the Department of the Navy. During these years, I have been restricted in my ability to engage in the practice of law on behalf of any entity other than the federal government. I have taken time to speak with law students from my alma mater, Case Western University School of Law, about careers in law, both on an individual basis and recently on a career panel at the law school.

**26. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In May 2021, I communicated with the office of Senator Sherrod Brown about my interest in a vacancy on the U.S. Court of Federal Claims. On May 24, 2021, I interviewed with staff members of Senator Brown's office about the position. On October 19, 2021, Senators Brown and Rob Portman sent a letter to President Biden recommending me to fill a vacancy on the Court of Federal Claims. I understand that Senator Bill Cassidy has also recommended me for the position. On February 14, 2023, the White House Counsel's Office began communicating with me about my interest in the position and I interviewed with attorneys from that office on February 17, 2023. Since March 18, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 7, 2023, the President announced his intent to nominate me.

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

No.



UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Brandon Scott Long

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

United States District Judge for the Eastern District of Louisiana

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 Attorney's Office for the Eastern District of Louisiana  
650 Poydras Street, Suite 1600  
New Orleans, Louisiana 70130

Residence: Metairie, Louisiana

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

1976; Metairie, Louisiana

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

2002 – 2005, Duke University School of Law; J.D., 2005

1995 – 1999, The University of Texas at Austin; B.B.A., B.A., 1999

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; 2014 – 2020

United States Attorney's Office for the Eastern District of Louisiana  
650 Poydras Street, Suite 1600

New Orleans, Louisiana 70130  
 Assistant United States Attorney (2021 – present; 2014 – 2020)  
 Deputy Chief, Narcotics Unit (2017 – 2018)

2020 – 2021  
 Federal Bureau of Investigation (detail)  
 935 Pennsylvania Avenue, Northwest  
 Washington, DC 20530  
 Deputy Chief of Staff (2020 – 2021)  
 Acting Chief of Staff (December 2020 – January 2021)

2010 – 2014  
 United States Attorney's Office for the District of Columbia  
 601 D Street, Northwest  
 Washington, DC 20004  
 Assistant United States Attorney

2005 – 2010, Summer 2004  
 King & Spalding LLP  
 1700 Pennsylvania Avenue, Northwest, Suite 900  
 Washington, DC 20006  
 Associate (2005 – 2010)  
 Summer Associate (Summer 2004)

Summer 2004  
 Jenkins & Gilchrist (now defunct)  
 Austin, Texas  
 Summer Associate

Summer 2003  
 Lemle & Kelleher LLP (now defunct)  
 New Orleans, Louisiana  
 Summer Associate

Summer 2003  
 Jones Walker LLP  
 201 Saint Charles Avenue  
 New Orleans, Louisiana 70170  
 Summer Associate

1999 – 2002  
 Arthur Andersen LLP (now defunct)  
 New York, New York  
 Senior Consultant (2001 – 2002)  
 Consultant (1999 – 2001)

1999  
 Milnes Bar  
 35 Hanover Street  
 Edinburgh EH2 2PJ, United Kingdom  
 Server/Bartender

Other affiliation (uncompensated)

2019 – present  
 Boys Hope Girls Hope of New Orleans  
 P.O. Box 19307  
 New Orleans, Louisiana 70179  
 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 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.

Excellence in Law Enforcement Award, New Orleans Metropolitan Crime Commission (2021)

Exceptional Partnership and Dedicated Service to the Federal Bureau of Investigation, Office of the Director (2021)

Spartan Award, Appreciation for Outstanding Contributions in the Field of Drug Law Enforcement, Drug Enforcement Agency, New Orleans Division (2019)

Demonstrated Excellence in Successful Prosecution of a Major Criminal Case, *United States v. Lawrence et al.*, Federal Bureau of Investigation (2019)

Duke University School of Law  
*Cum laude* (2005)  
 Duke Law Journal, Staff Editor (2003 – 2005)

The University of Texas at Austin  
*Cum laude* (1999)  
 Merit Scholarships (1995 – 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.

American Bar Association (2006 – 2011; 2012 – 2013)

Federal Bar Association (2017 – 2019; 2022 – present)

Criminal Law Section

New Orleans Chapter

10. **Bar and Court Admission:**

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

District of Columbia, 2006

Texas, 2005

There have been no lapses in membership. I have been on inactive status in Texas since 2010.

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

Supreme Court of the United States, 2013

United States Court of Appeals for the Fourth Circuit, 2007

United States Court of Appeals for the Fifth Circuit, 2016

United States District Court for the Eastern District of Louisiana, 2014

There have been no lapses in membership.

11. **Memberships:**

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

Boys Hope Girls Hope of New Orleans

Board of Directors (2019 – present)

Jésuit High School of New Orleans

Mock Trial Coach (2019 – 2020; 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, Boys Hope Girls Hope of New Orleans does not currently discriminate and has not formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies. Jesuit High School of New Orleans is an all-boys, Catholic school. To the best of my knowledge, Jesuit High School does not discriminate on the basis of race, religion, or national origin. As an all-boys school, there are no female students. Further, it is my understanding that, prior to 1962, Jesuit High School was open only to white students.

**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.

*Siemens Settling Multi-National Anti-Bribery Probe for \$1.6 Billion*, King & Spalding Client Alert (Dec. 22, 2008). Copy supplied.

*Protecting Employer Investment in Training: Noncompetes vs. Repayment Agreements*, 54 Duke L.J. 1295 (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.

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.

September 3, 2021: Speaker, The Role of a Prosecutor, Vestavia Hills High School Senior Leadership Class, Vestavia Hills, Alabama. The speech centered on the work of law enforcement and the role of a prosecutor. I have no notes, transcript, or recording. The address for Vestavia Hills High School is 2235 Lime Rock Road, Vestavia Hills, Alabama 35216.

May 2, 2019: Co-Presenter, Overdose Death Criminal Investigations, Jefferson Parish Coroner's Office, Harvey, Louisiana. Draft presentation supplied.

March 21, 2019: Co-Presenter, Overdose Death Investigations Seminar, United States Attorney's Office for the Eastern District of Louisiana, New Orleans, Louisiana. Draft presentation supplied.

September 21, 2018: Co-Presenter, State/Federal Collaboration on the Opioid Epidemic, sponsored by community leaders in Washington Parish, Franklinton, Louisiana. Draft presentation supplied.

September 18, 2018: Speaker, Law Enforcement Response to the Opioid Crisis, Spring Lake Neighborhood Association, New Orleans, Louisiana. Draft notes supplied.

January 26, 2017: Speaker, The U.S. Criminal Justice System, United States Attorney's Office for the Eastern District of Louisiana, New Orleans, Louisiana. I was one of four or five Assistant United States Attorneys who spoke to a group of Russian law students from Moscow State University about the U.S. criminal justice system. I have no notes, transcript, or recording. The address for the United States Attorney's Office for the Eastern District of Louisiana is 650 Poydras Street, Suite 1600, New Orleans, Louisiana 70130

November 4, 2015: Speaker, Student Pledge Against Gun Violence, Mildred S. Harris Elementary, Bridge City, Louisiana. Draft notes supplied.

October 15, 2014: Speaker, Student Pledge Against Gun Violence, Saint Christopher School, Metairie, Louisiana. Draft 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.

Katy Marquardt, *U. Texas Fraternity Gives to Fight AIDS*, Daily Texan (Dec. 3, 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.

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.

To my best recollection, during either sophomore or junior year of college, I performed compensated work on two or three occasions on behalf of the Republican Party of Texas. Specifically, I made unsolicited phone calls seeking donations on behalf of the party.

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

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

2005 – 2010  
King & Spalding LLP  
1700 Pennsylvania Avenue, Northwest, Suite 900  
Washington, DC 20006  
Associate (2005 – 2010)

2010 – 2014  
United States Attorney's Office, District of Columbia  
601 D Street, Northwest  
Washington, DC 20530  
Assistant United States Attorney

2020 – 2021  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, Northwest  
Washington, DC 20530

Deputy Chief of Staff (2020 – 2021)  
Acting Chief of Staff (December 2020 – January 2021)

2021 – present; 2014 – 2020  
United States Attorney's Office for the Eastern District of Louisiana  
650 Poydras Street, Suite 1600  
New Orleans, Louisiana 70130  
Assistant United States Attorney (2021 – present; 2014 – 2020)  
Deputy Chief, Narcotics Unit (2017 – 2018)

- 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.

After completing law school in 2005, I joined King & Spalding LLP in Washington, DC, as an associate in the Special Matters and Government Investigations practice. There, I focused on the representation of global companies and individuals in matters involving federal criminal law. My work primarily consisted of conducting internal investigations and developing corporate compliance programs with particular focus on the Foreign Corrupt Practices Act (FCPA), the U.S. law that prohibits companies and individuals from paying bribes to foreign government officials. I also worked on civil matters involving U.S. securities laws. I performed hundreds of hours of pro bono work, which included civil and criminal litigation, served on the firm's hiring committee, and oversaw the summer associate program.

From 2010 to 2014, I served as an Assistant United States Attorney (AUSA) in Washington, DC. My practice involved the investigation and prosecution of criminal matters in the District of Columbia Superior Court and the District of Columbia Court of Appeals. I served as lead counsel in hundreds of cases and was involved in all aspects of criminal litigation, including the presentation of evidence to grand juries; the briefing and arguing of motions; discovery production; the negotiation of pleas; evidentiary hearings; trials; sentencing proceedings; and appeals.

From 2014 to 2020, and then from 2021 to the present, I have served as an AUSA in the Eastern District of Louisiana. In this role, I have directed the

investigation and prosecution of murder and other violent crimes, narcotics offenses, public corruption, insurance fraud, money laundering, tax offenses, social security fraud, and sex offenses. I am currently a member of the Financial Crimes Unit, where my cases primarily involve the investigation and prosecution of fraud and federal tax violations. Previously, I served as the Deputy Chief of the Narcotics Unit (2017 – 2018), where I advised other AUSAs on investigation and trial strategies, evaluated prosecution and plea decisions, and reviewed and approved wiretap warrants. I also served as the office's Opioid Coordinator (2017 – 2020), during which time I collaborated with law enforcement partners to enhance district-wide opioid prevention and interdiction efforts.

From 2020 to 2021, I served as the Deputy Chief of Staff—and for a short time, the Acting Chief of Staff—to the Director of the Federal Bureau of Investigation (FBI) in Washington, DC. In these roles, I worked primarily on policy, public affairs, and administrative matters. Among other responsibilities, I helped to prepare many of the Director's public statements and internal communications; advised on media appearances and congressional engagements; worked with the Department of Justice on policy matters affecting the FBI; and oversaw the functioning of the Director's office staff.

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

As an associate at King & Spalding LLP, my typical clients were global companies and individuals. My specialization involved conducting internal investigations and creating robust corporate compliance programs.

As an AUSA in Washington, DC, and the Eastern District of Louisiana, and in my work at the FBI, my client was the United States.

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

As an associate at King & Spalding LLP from 2005 to 2010, I made one in-person court appearance on a civil pro bono matter. I also helped to draft pleadings in criminal pro bono matters in Virginia state court, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

As an AUSA in Washington, DC, from 2010 to 2014, I appeared frequently in the District of Columbia Superior Court to handle all aspects of criminal litigation. I also authored briefs in the District of Columbia Court of Appeals and presented two oral arguments.

As an AUSA in the Eastern District of Louisiana, from 2014 to 2020, and from 2021 to the present, I have appeared in court frequently in the United States District Court for the Eastern District of Louisiana to handle all aspects of criminal litigation. I have also co-authored briefs in the United States Court of Appeals for the Fifth Circuit.

i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 67% |
| 2. state courts of record:  | 33% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 5%  |
| 2. criminal proceedings: | 95% |

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

As an AUSA in Washington, DC, I tried approximately 27 criminal cases to verdict, of which 15 were jury trials and 12 were non-jury trials. I recall being sole counsel in 26 of the trials. In one trial, I was chief counsel with another AUSA serving as co-counsel.

As an AUSA in the Eastern District of Louisiana, I have tried five cases to verdict, all of which were jury trials. In three of those cases, I was chief counsel with another AUSA serving as co-counsel. In the other two cases, I served as co-counsel with another AUSA serving as the lead.

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 62% |
| 2. non-jury: | 38% |

- 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. However, I co-authored a petition for writ of certiorari in *United States v. Debreus*, No. 07-10522 (2008). I am unable to locate a copy of the brief.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases

were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. McGowan et al.*, Case No. 21-CR-110 (E.D. La.) (Vance, J.)

From 2021 to the present, I have investigated and prosecuted an insurance fraud scheme in which defendants staged car accidents with tractor-trailers at busy intersections around the city of New Orleans. To carry out their scheme, the defendants intentionally collided their cars with tractor-trailers; sued the truck drivers, trucking companies, and their insurance companies for monetary damages; lied to the police and during sworn depositions; obtained unnecessary medical treatment, driving up the costs of their alleged "loss"; and ultimately settled their cases for lucrative sums, premised on their falsehoods. This investigation has resulted in seven conspiracy indictments covering 47 defendants. One such case, *McGowan*, involved seven defendants who were charged with conspiring to commit mail fraud and mail fraud. I presented this case to the grand jury, produced discovery, negotiated plea offers, and handled sentencing hearings. To date, four of these defendants have pled guilty and been sentenced to terms of imprisonment— Mr. Allen received 37 months, Ms. McGowan and Ms. T. Brown each received 24 months, and Ms. Ridley received six months. Two defendants, Ms. L. Johnson and Ms. D. Johnson, have pled guilty and are awaiting sentencing. One defendant, Mr. J. Brown, is a fugitive.

Co-Counsel

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Edward John Rivera  
Maria Michelle Carboni  
United States Attorney's Office for the Eastern District of Louisiana  
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New Orleans, LA 70130  
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Opposing Counsel

Davidson S. Ehle, III (McGowan)  
Marino & Ehle LLC  
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Gretna, LA 70053  
(504) 362-0666

John Garrison Jordan (L. Johnson)  
Chehardy, Sherman, Williams, Murray, Recile, Stake  
111 North Oak Street, Suite 200  
Hammond, LA 70401  
(985) 269-7220

Juan Pablo Bernal (D. Johnson)  
4902 Canal Street, Suite 201  
New Orleans, LA 70119  
(504) 264-2883

Dwight Michael Doskey (Allen)  
321 North Vermont Street, Suite 209  
Covington, LA 70433  
(504) 388-3782

Julie Christine Tizzard (T. Brown)  
700 Camp Street, Suite 101  
New Orleans, LA 70130  
(504) 529-3774

Samuel H. Winston (Ridley)  
Winston & Bergeron LLP  
1700 Josephine Street  
New Orleans, LA 70113  
(504) 577-2500

2. *United States v. Age, Jr., et al.*, Case No. 16-CR-32 (E.D. La.) (Ashe, J.)

In 2021 and 2022, I worked on the trial team that convicted four defendants of charges relating to the 2012 murder of a federal cooperating witness. Mr. Age, Jr., had owned a home healthcare company in Baton Rouge, Louisiana. In 2011, Mr. Age, Jr., and some of his employees were charged federally with healthcare fraud. One of the employees agreed to cooperate with the government. Learning of the cooperation, Mr. Age, Jr., directed his son and his son's friend, both co-defendants in the murder case, to enlist a New Orleans-based gang member, the fourth defendant, to murder the cooperator before he could testify. The defendants were indicted on charges of conspiracy to commit murder for hire, murder for hire, and related offenses. In preparation for the trial, I drafted pretrial motions and prepared witnesses for testimony. During trial, I conducted direct and cross examinations of government and defense witnesses, including an arson expert and a government cooperator who was a former gang member and witnessed the execution of the victim. After a three-week trial, the jury found all four defendants guilty of all but one charge. All four defendants were sentenced to mandatory life imprisonment. The defendants have filed a notice of appeal.

Co-Counsel

Elizabeth A. Privitera  
 David Earl Haller  
 Theodore R. Carter, III  
 United States Attorney's Office for the Eastern District of Louisiana  
 650 Poydras Street, Suite 1600  
 New Orleans, LA 70130  
 (504) 680-3000

Opposing Trial Counsel

Richard J. Bourke (Age, Jr.)  
 Louisiana Capital Assistance Center  
 636 Baronne Street  
 New Orleans, LA 70113  
 (504) 558-9867

Steven Lemoine (Age, III)  
 4240 Canal Street  
 New Orleans, LA 70119  
 (504) 236-6211

Kerry P. Cuccia (Guillory)  
 3606 Canal Street  
 New Orleans, LA 70119  
 (504) 595-8965

Anna Lisa Friedberg (Wilson, Jr.)  
 3110 Canal Street  
 New Orleans, LA 70119  
 (504) 444-8557

3. *United States v. Farris et al.*, Case No. 18-CR-239 (E.D. La.) (Milazzo, J.)

Mr. M. Cantu-Cox and Mr. C. Cantu-Cox (the "Cantu-Coxes") were large-scale methamphetamine suppliers from the Houston area who were charged in 2016, alongside nine other defendants, with conspiring to distribute methamphetamine and other offenses in Case No. 16-CR-162 (E.D. La.) (Vitter, J.). I was the lead prosecutor on that case. While the case was pending, investigators developed evidence that the Cantu-Coxes were responsible for the murder of one of their drug customers, V.S., an 18-year-old man who lived in the New Orleans area. V.S. had stolen money from the Cantu-Coxes, causing the Cantu-Coxes to hatch a plan to kidnap V.S. They enlisted the help of Mr. Farris, Ms. Doucet, and Ms. Aspuria, all of whom lived in the New Orleans area. At the direction of Mr. Farris, Ms. Doucet contacted V.S. over social media and suggested they meet for a sexual encounter. This was a ruse; the purpose of the meeting was for Ms. Doucet to provide V.S. with a cocktail of drugs, rendering him incapacitated, and then deliver V.S. to the Cantu-Coxes at a New Orleans hotel. On the night of the meeting, Ms. Doucet and

Ms. Aspuria picked up V.S. and began driving around in Ms. Aspuria's car, as Ms. Doucet secretly mixed the cocktail of drugs into V.S.'s drink. When V.S. passed out, Ms. Doucet and Ms. Aspuria brought V.S. to the Cantu-Coxes, who loaded V.S.'s still body into their car and began driving back to Houston. During the drive, the Cantu-Coxes realized V.S. was dead. They waited until nightfall and placed his body in a bayou, where it washed ashore one week later. From 2017 to 2022, except during my detail to the FBI, I investigated and prosecuted the murder case. This involved interviewing potential witnesses and cooperators; analyzing phone records and forensic evidence; meeting with the victim's family; presenting the case to a grand jury; negotiating plea resolutions with the participants in the scheme; and handling sentencing hearings. For their role in V.S.'s death and for their participation in the methamphetamine conspiracy, the Cantu-Coxes each received sentences of 240 months in prison. Ms. Aspuria received a sentence of 120 months in prison. Ms. Doucet received a sentence of 88 months in prison. Mr. Farris received a sentence of 87 months in prison.

Co-Counsel

David H. Sinkman (former Assistant United States Attorney)  
(646) 872-7162

Opposing Counsel

Michael Seth Fawer (M. Cantu-Cox)  
Smith & Fawer, LLC  
312 30th Street  
New Orleans, LA 70124  
(504) 483-8600

Lindsay A. Larson, III (C. Cantu-Cox)  
Deceased

James Alan Williams (Farris)  
706 Derbigny Street  
Gretna, LA 70053  
(504) 361-0636

Cynthia Marie Cimino (Doucet)  
BrowneLaw LLC  
3330 West Esplanade South, Suite 302  
Metairie, LA 70002  
(504) 648-0171

Ian Lewis Atkinson (Aspuria)  
Schonekas, Evans, McGoey & McEachin, LLC  
909 Poydras Street, Suite 1600  
New Orleans, LA 70112  
(504) 680-6050



4. *United States v. Alexander*, Case No. 16-CR-197 (E.D. La.) (Milazzo, J.)

From 2016 to 2021, except during my detail to the FBI, I was the lead attorney on the investigation and prosecution of Mr. Alexander for drug, firearm, and financial crimes. Before his arrest in 2016, Mr. Alexander packaged, marketed, and sold a product that he named “Bonita,” a combination of over-the-counter chemicals that he sold to the most prolific drug dealers in New Orleans. The drug dealers used the Bonita to “cut,” or dilute, their illegal drug products to increase their quantity and earn more profits. Mr. Alexander’s primary defense at trial was that the underlying chemicals were not controlled substances, and that he purchased them legally and merely repackaged and sold them. I worked on all aspects of the investigation, including getting judicial approval for a search warrant for Mr. Alexander’s residence, issuing grand jury subpoenas for records and testimony, and presenting the case to the grand jury. Mr. Alexander went to trial in August 2019. In preparation for the trial, I managed the production of discovery, drafted and argued pretrial motions, prepared government exhibits, and prepared witnesses for testimony. During trial, I conducted direct and cross examinations of government and defense witnesses, including the cross examination of Mr. Alexander; argued evidentiary objections and motions for judgment; and delivered the closing argument. After a week-long trial, the jury convicted Mr. Alexander on all but one count. Mr. Alexander was sentenced to a prison term of 136 months and ordered to forfeit approximately \$425,000 in proceeds from his illegal activities. Mr. Alexander has filed an appeal challenging his conviction, which is currently pending in the Fifth Circuit.

Co-Counsel

Theodore R. Carter, III  
United States Attorney’s Office for the Eastern District of Louisiana  
650 Poydras Street, Suite 1600  
New Orleans, LA 70130  
(504) 680-3165

Opposing Trial Counsel

Walter Francis Becker, Jr.  
Chaffè McCall LLP  
Energy Centre  
1100 Poydras Street, Suite 2300  
New Orleans, LA 70163  
(504) 585-7000

5. *United States v. Mayfield, Markham*, Case No. 17-CR-241 (E.D. La.) (Zainey, J.)

From 2016 to 2021, except during my detail to the FBI, I served as co-counsel on the investigation and prosecution of Mr. Mayfield, a well-known jazz performer in New Orleans, and his business partner and long-time friend Mr. Markham. Both men served on the board of the New Orleans Public Library Foundation, the nonprofit organization that acts as the funding mechanism for the New Orleans public library system. Between 2011 and 2013, the men used their positions on the board to unlawfully divert more than

\$1.3 million for their own benefit, and then used the ill-gotten proceeds to fund lavish expenditures. As a member of the case team, I assisted with interviewing witnesses, presenting evidence to the grand jury, drafting the indictment, preparing pretrial motions, and negotiating a resolution with the defense. In 2020, the defendants pled guilty to conspiracy to commit mail and wire fraud. Each defendant received a prison sentence of 18 months. In addition, the defendants were ordered to forfeit a 24-carat, gold-plated trumpet they had purchased with the stolen funds.

Co-Counsel

Dall Kammer  
Theodore R. Carter, III  
United States Attorney's Office for the Eastern District of Louisiana  
650 Poydras Street, Suite 1600  
New Orleans, LA 70130  
(504) 680-3000

Opposing Counsel

Claude J. Kelly (Mayfield)  
Federal Public Defender's Office  
Hale Boggs Federal Building  
500 Poydras Street, Room 318  
New Orleans, LA 70130  
(504) 589-7939

Sara A. Johnson (Markham)  
700 Camp Street  
New Orleans, LA 70130  
(504) 528-9500

6. *United States v. Pendleton*, Case No. 16-CR-41 (E.D. La.) (Milazzo, J.), *aff'd*, 761 F. App'x 339 (5th Cir. 2019)

From 2015 to 2021, except during my detail to the FBI, I served as lead counsel in the criminal prosecution of Mr. Pendleton, a New Orleans businessman who laundered drug proceeds for heroin dealers in New Orleans. Mr. Pendleton was charged with multiple counts of money laundering, structuring cash transactions, conspiracy to distribute heroin, and making false statements on loan applications. Because of his significant wealth, Mr. Pendleton was able to purchase luxury cars and residential properties for drug dealers in his own name, allowing the drug dealers to use the assets while making sizable, off-the-books cash payments to Mr. Pendleton. Mr. Pendleton elected to go to trial in April 2017. In preparation for trial, I drafted pretrial motions, oversaw discovery production, prepared trial exhibits, and met with and prepared government witnesses. As the lead prosecutor, I handled the examination of witnesses, argued objections and motions for judgment, and delivered the opening and rebuttal arguments. The jury returned a verdict of guilty on money laundering and structuring counts. Mr. Pendleton was sentenced to 121 months in prison, ordered to pay a fine of \$100,000, and ordered to

forfeit more than \$700,000 in cash and assets. I later handled post-trial motions and co-authored responses to Mr. Pendleton's appeals to the Fifth Circuit Court of Appeals.

Co-Counsel

Theodore R. Carter, III  
United States Attorney's Office for the Eastern District of Louisiana  
650 Poydras Street, Suite 1600  
New Orleans, LA 70130  
(504) 680-3165

Opposing Trial Counsel

William P. Gibbens  
Schonekas, Evans, McGoe & McEachin, LLC  
909 Poydras Street, Suite 1600  
New Orleans, LA 70112  
(504) 680-6050

7. *United States v. Daigle et al.*, Case No. 17-CR-193 (E.D. La.) (Morgan, J.)

From 2017 to 2019, I handled the investigation and prosecution of a methamphetamine trafficking conspiracy involving 11 defendants. The investigation began when the United States Postal Service lawfully intercepted a suspicious package containing methamphetamine that had been sent to a New Orleans-based drug dealer. From the seizure of that package, our investigation team was able to work upstream to identify multiple levels of the distributors' supply chain, leading to the arrest and indictment of drug dealers in Louisiana, Texas, and California. During the investigation and prosecution, I worked with the case agents to secure search warrants; presented the 23-count indictment, involving drug and firearm charges, to the grand jury; negotiated plea resolutions with each defendant; and handled sentencing and post-conviction proceedings. The following defendants received prison sentences—Mr. Hatch, 160 months; Mr. Higginbotham, 120 months; Mr. Polk, 120 months; Ms. Vidaure, 96 months; Mr. Daigle, 78 months; Mr. Lopez-Lopez, 60 months; Mr. Torres-Cadenas, 60 months; Mr. Giandalone, 48 months; and Mr. Clines, 42 months. Ms. Lopez and Mr. Melancon each received three years of probation.

Opposing Counsel

Maura Doherty (Daigle)  
Federal Public Defender (New Orleans)  
Hale Boggs Federal Building  
500 Poydras Street, Room 318  
New Orleans, LA 70130  
(504) 589-7953

Aris W. Cox, VI (Giandalone)  
631 Saint Charles Avenue  
New Orleans, LA 70130

(504) 214-7416

John Herr Musser, IV (Higginbotham)  
70439 Courtano Drive  
Covington, LA 70433  
(504) 289-2589

Townsend M. Myers (Melancon)  
4907 Magazine Street  
New Orleans, LA 70115  
(504) 237-5245

Dylan C. Utley (Clines)  
DiGiulio Utley, LLC  
K&B Plaza  
530 Powder Street, Suite 3  
New Orleans, LA 70114  
(504) 524-4080

Sara A. Johnson (Hatch)  
700 Camp Street  
New Orleans, LA 70130  
(504) 528-9500

Jason Rogers Williams (Vidaure)  
Orleans Parish District Attorney  
619 South White Street  
New Orleans, LA 70119  
(504) 822-2414

Roma A. Kent (Torres-Cadenas)  
5500 Prytania Street, #120  
New Orleans, LA 70115  
(504) 224-9717

Bruce G. Whittaker (Lopez-Lopez)  
25 Osborne Road  
Asheville, NC 28804  
(504) 554-8674

William Martin Sothorn (Lopez)  
Deceased

Ian Lewis Atkinson (Polk)  
Schonekas, Evans, McGoey & McEachin, LLC  
909 Poydras Street, Suite 1600

New Orleans, LA 70112  
(504) 680-6050

8. *United States v. Daniels*, Case No. 16-CR-8 (E.D. La.) (Milazzo, J.)

From 2015 to 2017, I served as lead counsel in the criminal prosecution of Mr. Daniels, a New Orleans-based cocaine dealer. In December 2015, agents from the Drug Enforcement Administration were conducting surveillance of Mr. Daniels' co-defendant, a Houston-based cocaine trafficker, when they tracked him to a hotel room in New Orleans. Upon making lawful entry into the room, agents discovered Mr. Daniels and his co-defendant in possession of crack cocaine, numerous instruments for packaging drugs and counting money, and almost \$300,000 in cash wrapped in cellophane. Mr. Daniels had been attempting to flush evidence as officers entered the room. In preparation for trial, I drafted pretrial motions, oversaw discovery production, prepared trial exhibits, and met with and prepared government witnesses—including cooperating drug dealers who agreed to testify for the government. As the lead prosecutor, I handled the examination of witnesses, argued objections and motions for judgment, and delivered the opening and rebuttal arguments. The jury returned a verdict of guilty on all counts. Mr. Daniels was initially sentenced to 240 months in prison; however, his sentence was later reduced to 120 months after the court granted his motion for a reduction.

Co-Counsel

Theodore R. Carter, III  
United States Attorney's Office for the Eastern District of Louisiana  
650 Poydras Street, Suite 1600  
New Orleans, LA 70130  
(504) 680-3165

Opposing Trial Counsel

Robert James Pastor  
4919 Canal Street, Suite 301  
New Orleans, LA 70119  
(504) 486-0402

9. *United States v. Sharper et al.*, Case No. 14-CR-284 (E.D. La.) (Milazzo, J.)

Mr. Sharper had been a longtime professional football player who finished his career in 2010 as a member of the New Orleans Saints. In 2016, I served as co-counsel in the criminal prosecution of Mr. Sharper and his two co-defendants, Mr. Licciardi and Mr. Nunez, for conspiring to drug unsuspecting women with intent to commit rape, and other offenses. As part of their scheme, the defendants met women at nightclubs and secretly placed controlled substances in their cocktails, rendering them incapacitated. The defendants then sexually assaulted the women, who oftentimes had difficulty recalling the events the following day. Mr. Sharper was arrested and charged in multiple jurisdictions across the country for similar offenses. He negotiated a global plea deal in the United States District Court for the Eastern District of Louisiana that resolved all of

his federal and state charges. He received a sentence of 220 months in prison. Mr. Licciardi and Mr. Nunez appeared intent on going to trial. During trial preparation, I responded to pretrial evidentiary and discovery motions. I also prepared witnesses for trial, including rape victims whom the government intended to call in its case. Just before the start of the trial, Mr. Nunez pled guilty. He received a prison sentence of 120 months. Mr. Licciardi pled guilty after jury selection and was later sentenced to 204 months in prison.

Co-Counsel

Michael Edward McMahon (retired Assistant United States Attorney)

Theodore R. Carter, III  
United States Attorney's Office for the Eastern District of Louisiana  
650 Poydras Street, Suite 1600  
New Orleans, LA 70130  
(504) 680-3165

Opposing Counsel

William P. Gibbens (Sharper)  
Schonekas, Evans, McGoey & McEachin, LLC  
909 Poydras Street, Suite 1600  
New Orleans, LA 70112  
(504) 680-6050

Ralph Capitelli (Licciardi)  
Capitelli & Wicker  
Energy Centre  
1100 Poydras Street, Suite 2950  
New Orleans, LA 70163  
(504) 582-2425

Sara A. Johnson (Nunez)  
700 Camp Street  
New Orleans, LA 70130  
(504) 528-9500

10. *United States v. Williams*, Case No. 2013-CF3-14331 (D.C. Super. Ct.) (Lee, J.)

From 2013 to 2014, I was the sole prosecutor on an armed carjacking case. The two victims were unloading their car at their home in Washington, DC, when four masked men, all carrying firearms, approached the car and demanded their cash, phones, and keys. The carjackers fled in the stolen car and the victims called the police. Officers spotted the car a short time later and gave pursuit, leading to a high-speed chase that ended when the car crashed in Prince George's County, Maryland. Three masked assailants fled the car into a wooded area along the highway. Officers pursued the assailants and apprehended two individuals, Mr. Williams and a juvenile male, a few

blocks away. The police were unable to locate the firearms used by the assailants, and no eyewitnesses could identify Mr. Williams. However, a central piece of the government's evidence was a mask, similar to the one worn by the assailants, that was dropped at the scene of the crash and contained traces of Mr. Williams's DNA. The juvenile male pled guilty, but Mr. Williams went to trial in 2014. I handled all aspects of the prosecution of this case, including the presentation to the grand jury; preparation of witnesses for trial; pretrial motions and discovery; trial; and sentencing. Mr. Williams was convicted of armed carjacking and related offenses and sentenced to 15 years in prison.

Opposing Trial Counsel

Susan Borecki  
455 Massachusetts Avenue, Northwest, #310  
Washington, DC 20001  
(202) 262-2072

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.)

While in private practice at King & Spalding LLP, I primarily advised U.S. companies and individuals on aspects of federal criminal law. As an example, from approximately 2007 through 2010, I represented a U.S. company in an FCPA investigation. The Department of Justice and the Securities and Exchange Commission were specifically investigating whether non-U.S. employees of the company conferred improper payments and benefits to foreign government officials in specific countries around the world. The company hired King & Spalding LLP to conduct an internal investigation and to work with U.S. authorities to resolve the inquiry. I acted as the senior-most associate handling day-to-day aspects of the investigation, including overseeing document collection and review; interviewing company witnesses; preparing presentations to U.S. authorities; and recommending remedial changes to the company's compliance programs.

As an AUSA in the Eastern District of Louisiana, in addition to my case work, I served as the office's Opioid Coordinator from 2017 to 2020. This primarily involved collaborating with federal and local law enforcement and other public officials to stem the flow of opioids through education, prevention, and prosecution. I have also participated in multiple hiring panels for AUSAs and summer interns.

I have not engaged in any lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a

syllabus of each course, provide four (4) copies to the committee.

I have not taught courses at a college or graduate-school level. However, in 2019 and 2022 through the present, I have volunteered to serve as one of the coaches of the mock trial team at Jesuit High School in New Orleans. This involves attending up to three practices per week over approximately three months, during which I teach high school students the basics of trial advocacy. I do not use a syllabus. The students then compete in competitions locally, and, depending on the results, state-wide and nationally.

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).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will recuse myself from any matter on which I worked while at the



United States Attorney's Office for the Eastern District of Louisiana. I will also recuse myself from any matter about which I learned nonpublic information through my work in the office. I will evaluate any other real or potential conflicts, or any relationship that could give rise to the appearance of a conflict, on an individualized basis and determine appropriate action with input from parties and their counsel. I will recuse myself where necessary or appropriate.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other applicable laws, rules, practices, judicial decisions, or Judicial Conference opinions.

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

During my five years at King & Spalding LLP, I spent hundreds of hours on pro bono matters, which included working on a civil matter on behalf of a former employee of the firm; collaborating on a petition for habeas corpus relief on behalf of a Virginia inmate; and serving as co-counsel on an appeal before the United States Court of Appeals for the Fourth Circuit, and later a petition for writ of certiorari to the Supreme Court of the United States, on behalf of a drug defendant who received a life sentence.

I have dedicated the past 13 years to serving the public as an AUSA at two United States Attorney's Offices and as the Deputy Chief of Staff and Acting Chief of Staff at the FBI. Although my ability to provide pro bono services is limited in these roles, I currently sit on the board of directors for Boys Hope Girls Hope of New Orleans, a local nonprofit that operates two group homes for children. I also serve as an assistant coach for the mock trial team at Jesuit High School.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On December 21, 2022, I submitted my resume to the office of Senator Bill Cassidy for consideration after the announcement that the Honorable Carl J. Barbier of the Eastern District of Louisiana would be taking senior status. On January 17, 2023, I interviewed with Senator Cassidy. On March 8, 2023, I interviewed with attorneys from the White House Counsel's Office. On March 10, 2023, I interviewed with Senator John N. Kennedy. On March 17, 2023, I was contacted by the White House Counsel's Office and informed that I would be moving forward in the selection process. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and with staff members from the offices of Senators Cassidy and Kennedy. On June 7, 2023, the President announced his intent to nominate me.

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

No.

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Matthew James Maddox

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

United States District Judge for the District of Maryland

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

United States District Court for the District of Maryland  
101 West Lombard Street  
Chambers 3B  
Baltimore, Maryland 21201

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

1977; Rossville, Baltimore County, Maryland

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

2008 – 2011, Yale Law School; J.D., 2011

2003 – 2004, Georgetown University Center for Professional Development; Certificate, 2004

1995 – 1999, Morgan State University; B.A., 1999

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.

2022 – present

United States District Court for the District of Maryland  
101 West Lombard Street, Chambers 3B  
Baltimore, Maryland 21201  
United States Magistrate Judge

2015 – 2022  
United States Attorney's Office for the District of Maryland  
36 South Charles Street, Fourth Floor  
Baltimore, Maryland 21201  
Assistant United States Attorney (2015 – 2022)  
Deputy Chief, Major Crimes Section (2020 – 2022)

2014 – 2015  
United States Court of Appeals for the Fourth Circuit  
101 West Lombard Street, Chambers 950  
Baltimore, Maryland 21201  
Law Clerk to the Honorable Andre M. Davis

2012 – 2014; Summer 2010  
Holland & Knight LLP  
800 Seventeenth Street, Northwest, Suite 1100  
Washington, DC 20006  
Associate (2012 – 2014)  
Summer Associate (2010)

2011 – 2012  
United States District Court for the Eastern District of Virginia  
401 Courthouse Square  
Alexandria, Virginia 22314  
Law Clerk to the Honorable Gerald Bruce Lee

Summer 2009  
Electronic Frontier Foundation  
454 Shotwell Street  
San Francisco, California 94109  
Summer Legal Intern

2004 – 2008  
American Psychological Association  
750 First Street, Northeast  
Washington, DC 20002  
Quality Assurance Coordinator (2006 – 2008)  
Technical Information Analyst and Specialist (2004 – 2006)

2003 – 2004  
Starbucks Corporation

1600 U Street, Northwest  
Washington, DC 20009  
Shift Supervisor and Barista

2001 – 2003  
Lee County School District Number One  
523 Forest Avenue  
Marianna, Arkansas 72360  
Teacher

2000 – 2001  
Service Employees International Union  
611 North Eutaw Street  
Baltimore, Maryland 21201  
Organizer

2000  
Association of Community Organizations for Reform Now (defunct)  
739 Eighth Street, Southeast  
Washington, DC 20003  
Organizer

2000  
Legal Placements, Incorporated  
1101 Vermont Avenue, Northwest, Ninth Floor  
Washington, DC 20005  
Temporary Employee

2000  
Care Connection, Incorporated  
1215 Annapolis Road, Suite 202  
Odenton, Maryland 21113  
Mental Health Aide

2000  
Columbia Courtyard by Marriott  
8910 Stanford Boulevard  
Columbia, Maryland 21045  
Cook

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.

United States Attorney's Office, Award for Outstanding Contribution to a Law Enforcement Initiative (2017)

American Bar Association Forum on Communications Law Moot Court Competition, Best Oralist (2011)

Yale Law School, Knight Law and Media Scholar (2011)

Lee Senior High School, Teacher of the Year (2002 – 2003)

J. William Fulbright Scholar, Kingston, Jamaica (1999 – 2000)

Morgan State University

B.A., *summa cum laude* (1999)

Academic Leadership Award (1999)

Naylor Award (1999)

Honors Scholarship (1995 – 1999)

Phi Sigma Tau International Honor Society, Member (1997)

Grant-Brett Promethean Kappa Tau Honor Society, President (1996)

Golden Key National Honour Society, Member (1996)

Phi Eta Sigma National Honor Society, Member (1996)

Alpha Lambda Delta National Academic Honor Society, Member (1996)

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

American Bar Association (2011 – 2012)

American Constitution Society, Yale Law School Chapter (2008 – 2011)

Black Law Students Association, Yale Law School Chapter (2008 – 2011)

Federal Magistrate Judges Association (2022 – present)

Just the Beginning – A Pipeline Organization (2022 – present)

National Bar Association (2020 – present)

United States District Court for the District of Maryland  
 Rules and Forms Committee, Member (2022 – present)  
 Security and Facilities Committee, Member (2022 – present)  
 Information Technology Committee, Member (2022 – present)

Yale Law School Information Society Project (2009 – 2010)

10. **Bar and Court Admission:**

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

District of Columbia, 2013  
 Virginia, 2011

There have been no lapses in membership. I have been an inactive/associate member in Virginia since 2019.

- 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 Fourth Circuit, 2015  
 United States District Court for the District of Maryland, 2013  
 United States District Court for the Eastern District of Virginia, 2012

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.

None.

- 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.

Not applicable.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have searched my personal files and the Internet in an effort to identify all published writings responsive to this question. I have identified the blog posts listed below, but it is possible that I may have inadvertently omitted responsive writings.

With Lynn Calkins, *FCC Regulations on Phone Call Captioning Held to Be Arbitrary and Capricious*, HOLLAND & KNIGHT REGULATORY LITIGATION BLOG (June 25, 2014). Copy supplied.

With Lynn Calkins, *No Judicial Review of FTC Jurisdiction Until the Agency Takes a Final Action*, HOLLAND & KNIGHT REGULATORY LITIGATION BLOG (June 4, 2014). Copy supplied.

*D.C. Circuit Hears Petition Concerning Use of Phone Call Captioning Technology for Persons with Hearing Impairments*, HOLLAND & KNIGHT REGULATORY LITIGATION BLOG (May 15, 2014). Copy supplied.

*Jean Burgess: YouTube and Participatory Culture*, YALE INFORMATION SOCIETY PROJECT BLOG (April 28, 2009). Copy supplied.

*Madhavi Sunder: iP*, YALE INFORMATION SOCIETY PROJECT BLOG (April 27, 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.

I was a contributor to two filings made with the Federal Communications Commission in 2009 and 2010 by Nicholas Bramble, then a post-doctoral fellow with the Information Society Project at Yale Law School:

Reply Comments in the Matter of Preserving the Open Internet / Broadband Industry Practices, April 26, 2010. Copy supplied.

Research Project on Educational Fair Use, December 15, 2009. Copy supplied.

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

I have searched my personal files and the Internet in an effort to identify all events responsive to this question. I have identified the events listed below, but it is possible that I may have inadvertently omitted responsive events.

March 16, 2023: Presiding Judge, Naturalization Ceremony, United States District Court for the District of Maryland, Baltimore, Maryland. Notes supplied.

February 10, 2023: Presiding Judge, Attorney Admission Ceremony, United States District Court for the District of Maryland, Baltimore, Maryland (virtual). Notes supplied.

January 18, 2023: Guest presenter, Trial Advocacy course, University of Maryland Carey School of Law, Baltimore, Maryland. Case study notes and presentation slides supplied.

November 2, 2022: Guest presenter, Criminal Procedure course, University of Maryland Carey School of Law, Baltimore, Maryland. Presentation slides supplied.

October 20, 2022: Panelist, Robes in School panel discussion, Just the Beginning – A Pipeline Organization, Loyola University Chicago School of Law, Chicago,

Illinois. The panel discussion was on the topics of the panel members' careers, the work of judicial law clerks and interns, and pursuing opportunities in the legal job market. I have no notes, transcript, or recording. The address for Just the Beginning is 70 West Madison Street, Suite 2900, Chicago, Illinois 60602. The address for Loyola University Chicago School of Law is 25 East Pearson Street, Chicago, Illinois 60611.

October 7, 2022: Presiding Judge, Attorney Admission Ceremony, United States District Court for the District of Maryland, Baltimore, Maryland (virtual). Notes supplied.

September 16, 2022: Presenter, Adrian Project, Internal Revenue Service – Criminal Investigation, Morgan State University, Baltimore, Maryland. Presentation slides provided.

September 9, 2022: Investiture of Hon. Matthew J. Maddox, United States District Court for the District of Maryland, Baltimore, Maryland. Remarks provided.

July 12, 2022: Guest presenter, Criminal Procedure course, University of Maryland Carey School of Law, Baltimore, Maryland. Presentation slides provided.

May 26, 2022: Guest, Fireside Chat with Judge Maddox question-and-answer session, Federal Bar Association, Maryland Chapter, Baltimore, Maryland (virtual). I answered questions of the moderator regarding my background, my career, and my work as a magistrate judge. I have no notes, transcript, or recording. The address for the Federal Bar Association is 4075 Wilson Boulevard, Eighth Floor, Arlington, Virginia 22203.

May 20, 2022: Speaker, Annual Luncheon of Federal Bar Association, Maryland Chapter, Baltimore, Maryland. Notes provided.

March 11, 2022: Presiding Judge, Attorney Admission Ceremony, United States District Court for the District of Maryland, Baltimore, Maryland (virtual). My remarks were substantially the same as those given on October 7, 2022, which are supplied.

October 17–21, 2021: Guest presenter, Maryland Chiefs and Sheriffs Associations Annual Professional Development Training Seminar, Ocean City, Maryland. I provided a brief presentation on federal jurisdiction of civil rights crimes and the process of making referrals for the investigation and prosecution of such crimes to federal authorities. The presentation was made on behalf of the United States Attorney's Office for the District of Maryland to leadership of local law enforcement agencies in Maryland. I have no notes, transcript, or recording. The seminar was sponsored by the Maryland Chiefs of Police Association and the

Maryland Sheriffs' Association. The Maryland Chiefs of Police Association and the Maryland Sheriffs' Association do not have physical addresses.

October 2021: Presenter, Maryland Human Trafficking Investigators Seminar, Ocean City, Maryland. I provided a presentation on a federal human trafficking prosecution as part of a multi-day training seminar for law enforcement investigators. The United States Attorney's Office for the District of Maryland sponsored the seminar in partnership with the Maryland Human Trafficking Task Force. I have no notes, transcript, or recording. The address for the United States Attorney's Office for the District of Maryland is 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201. The Maryland Human Trafficking Task Force does not have a physical address.

October 15, 2020: Presenter, *Fraud and Identity Theft in a Pandemic*, Maryland Identity Theft Working Group Annual Training, Baltimore, Maryland (virtual). The training presentation was delivered to criminal prosecutors and law enforcement and private sector fraud investigators on the topic of federal fraud and identity theft offenses related to the COVID-19 pandemic. The United States Attorney's Office for the District of Maryland sponsored the Maryland Identity Theft Working Group Annual Training in partnership with the Mid-Atlantic chapter of the International Association of Financial Crimes Investigators (IAFCI). I have no notes, transcript, or recording. The address for the United States Attorney's Office for the District of Maryland is 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201. The address for IAFCI is 1020 Suncast Lane, Suite 102, El Dorado Hills, California 95762.

May 30, 2018: Panelist, *Federal Identity Theft Prosecution* panel discussion, Maryland Identity Theft Working Group Annual Training, University of Baltimore School of Law, Baltimore, Maryland. The panel discussed the process of presenting identity theft related criminal cases for federal investigation and prosecution and participating in a federal identity theft related investigation. The United States Attorney's Office for the District of Maryland sponsored the Maryland Identity Theft Working Group Annual Training in partnership with the Mid-Atlantic chapter of the International Association of Financial Crimes Investigators (IAFCI). I have no notes, transcript, or recording. The address for the United States Attorney's Office for the District of Maryland is 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201. The address for IAFCI is 1020 Suncast Lane, Suite 102, El Dorado Hills, California 95762.

April 9–12, 2017: Presenter, Maryland Human Trafficking Investigators Seminar, Ocean City, Maryland. I provided a presentation on a federal human trafficking prosecution as part of a multi-day training seminar for law enforcement investigators. The United States Attorney's Office for the District of Maryland sponsored the seminar in partnership with the Maryland Human Trafficking Task Force. I have no notes, transcript, or recording. The address for the United States Attorney's Office for the District of Maryland is 36 South Charles Street, Fourth

Floor, Baltimore, Maryland 21201. The Maryland Human Trafficking Task Force does not have a physical address.

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

Daniel M. Moore, *Magistrate Judge Matthew J. Maddox, United States District Court for the District of Maryland*, FEDERAL BAR ASSOCIATION, MARYLAND CHAPTER NEWSLETTER, Summer 2022. 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 2022, I have served as a United States Magistrate Judge for the District of Maryland. I was appointed to that position by the judges of the United States District Court for the District of Maryland. The district court has jurisdiction over civil matters raising questions of federal law or involving parties with diversity of citizenship and federal criminal matters. The jurisdiction of United States magistrate judges is defined by Title 28, United States Code, Section 636. I preside over all proceedings in civil lawsuits by consent of the parties, conduct settlement conferences in civil lawsuits, and decide discovery disputes and non-dispositive motions referred to me by district judges. With respect to criminal matters, I preside over preliminary proceedings in felony cases, including initial appearances, detention hearings, and arraignments, and I preside over all proceedings in misdemeanor and petty offense cases. I review applications for search and seizure warrants and arrest warrants.

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

I have presided over two trials in civil cases and entered judgment following guilty pleas in several misdemeanor criminal cases.

- i. Of these cases, approximately what percent were:

|               |     |
|---------------|-----|
| jury trials:  | 50% |
| bench trials: | 50% |

- ii. Of these cases, approximately what percent were:

|                       |      |
|-----------------------|------|
| civil proceedings:    | 100% |
| criminal proceedings: | 0%   |

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

dissents.

*Krista M. v. Kijakazi*, Civ. No. MJM-21-2474, 2023 WL 2500306 (D. Md. Mar. 14, 2023).

*Garland v. Fidelity Capital Holdings, Inc.*, Civ. No. JRR-21-947, 2023 WL 2366735 (D. Md. Mar. 6, 2023).

*Martz v. Day Development Company L.C., et al.*, Civ. No. JKB-15-3284, 2023 WL 2351825 (D. Md. Mar. 3, 2023).

*Franco v. Ferguson*, Civ. No. MJM-22-1584, 2023 WL 1863099 (D. Md. Feb. 9, 2023).

*United States v. Weston*, Crim. No. GLR-19-318, 2023 WL 1416824 (D. Md. Jan. 31, 2023).

*Carbajal Acevedo v. McCalla et al.*, Civ. No. MJM-22-1157, 2023 WL 1070436 (D. Md. Jan. 27, 2023).

*Laura H. v. Kijakazi*, Civ. No. MJM-21-2531, 2023 WL 1070549 (D. Md. Jan. 27, 2023).

*Neal v. United States*, Civ. No. MJM-19-1033, 2023 WL 361137 (D. Md. Jan. 23, 2023).

*Delcid v. Isabella*, Civ. No. MJM-20-3167, 2022 WL 17342048 (D. Md. Nov. 29, 2022).

*Neal v. United States*, Civ. No. MJM-19-1033, 2022 WL 17105159 (D. Md. Nov. 22, 2022).

*Harris v. Charles E. Smith Life Communities*, Civ. No. MJM-21-1242, 2022 WL 4777592 (D. Md. Oct. 3, 2022).

*Optimum Construction, Inc. v. Harbor Business Compliance Corp.*, Civ. No. MJM-21-2432, 2022 WL 4608170 (D. Md. Sept. 30, 2022).

*Kubas v. 331B, LLC*, Civ. No. MJM-20-2456, 2022 WL 4608147 (D. Md. Sept. 30, 2022).

*McMillan-McCartney v. McMillan*, Civ. No. MJM-18-3331, 2022 WL 4777769 (D. Md. Sept. 30, 2022).

*James L. v. Comm'r, Soc. Sec.*, Civ. No. MJM-21-1718, 2022 WL 4778646 (D. Md. Sept. 30, 2022).

*Diane J. v. Kijakazi*, Civ. No. MJM-21-1193, 2022 WL 4551879 (D. Md. Sept. 29, 2022).

*Kim S. v. Kijakazi*, Civ. No. MJM-21-1344, 2022 WL 4539559 (D. Md. Sept. 28, 2022).

*Crystal S. v. Kijakazi*, Civ. No. MJM-20-3717, 2022 WL 4539717 (D. Md. Sept. 28, 2022).

*Bryant v. Mayor & City Council of Baltimore*, Civ. No. MJM-21-545, 2022 U.S. Dist. LEXIS 167960 (D. Md. Sep. 15, 2022).

*Rich v. Diana Consulting Servs. LLC*, Civ. No. SAG-21-1670, 2022 WL 1289663 (D. Md. Apr. 29, 2022).

*Doretha B. v. Kijakazi*, Civ. No. MJM-20-2962, 2022 WL 1052680 (D. Md. Apr. 5, 2022).

*Mahdy v. Morgan State Univ.*, Civ. No. SAG-20-2715, 2022 WL 899277 (D. Md. Mar. 28, 2022).

- 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. *Carbajal Acevedo v. McCalla et al.*, Civ. No. MJM-22-1157, 2023 WL 1070436 (D. Md. Jan. 27, 2023).

The plaintiff filed this civil action against his former employers alleging that the defendants withheld overtime compensation owed to him in violation of the Fair Labor Standards Act ("FLSA"), the Maryland Wage and Hour Law ("MWHL"), and the Maryland Wage Payment and Collection Law ("MWPCCL"). The defendants filed a motion to dismiss or, alternatively, for summary judgment challenging the plaintiff's entitlement to relief as an employee of the defendants. The defendants argued that the plaintiff was an independent contractor and presented evidence in support of this contention. In opposition to the motion, the plaintiff argued that his civil complaint adequately pleaded facts supporting his status as an employee and presented evidence contesting the defendants' position that he was an independent contractor.

I found that the civil complaint did not plead sufficient facts to satisfy the facial plausibility standard as to the plaintiff's status as an employee for FLSA, MWHL, and MWPCCL purposes. On this basis, I granted the motion, ordered dismissal of the complaint without prejudice, and granted the plaintiff leave to amend his

pleading. The plaintiff subsequently filed an amended complaint. The case is currently pending.

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Counsel for Defendant:

Aron Lucas Zavaro  
Thatcher Law Firm, LLC  
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2. *Neal v. United States*, Civ. No. MJM-19-1033, 2022 WL 17105159 (D. Md. Nov. 22, 2022); 2023 WL 361137 (D. Md. Jan. 23, 2023).

This civil action was filed under the Federal Tort Claims Act by a female patient of Baltimore Veterans Affairs Medical Center (“BVAMC”), alleging professional negligence and other tort causes of action arising from the plaintiff’s visit to BVAMC’s Cardiology Clinic for an echocardiogram procedure. The procedure required the plaintiff to disrobe partially. The plaintiff alleged that, during the procedure, a male BVAMC employee walked into the examination room without permission and pulled back a privacy curtain to engage in a conversation with the female employee conducting the procedure. The plaintiff further alleged that the male employee called the patient and harassed her days after the incident and while an investigation of his conduct was ongoing.

The plaintiff claimed economic damages and physical and emotional injuries. Some of the plaintiff’s claims were dismissed, and summary judgment was entered by the district court in favor of the defendant for others, including the plaintiff’s claims for economic damages, damages for certain physical injuries, and damages arising from any sexual assault or sexual harassment of the plaintiff. Upon consent of the parties to proceed before a magistrate judge, the case was subsequently re-assigned to me for trial on the plaintiff’s remaining claims.

I resolved several pretrial motions *in limine* and presided over the bench trial. After the trial, I entered judgment in favor of the plaintiff on her claims for professional negligence and negligent supervision with an award of \$5,000 in compensatory damages. I entered judgment in favor of the defendant on the

claims for intrusion upon seclusion and negligent breach of implied contract to maintain confidentiality. The plaintiff has noticed an appeal of the judgment, which is pending.

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Counsel for Defendant:

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3. *Guerrero v. Lonza Walkersville, Inc.*, Civ. No. JRR-21-2969 (Nov. 7, 2022).

The plaintiff filed this civil action against his former employer alleging the employer discriminated against him based on his mental disability and retaliated against him for requesting accommodations in violation of the Americans with Disabilities Act ("ADA") and ADA Amendments Act. During discovery, the defendant filed correspondence outlining deficiencies in the plaintiff's responses to interrogatories and requests for production of documents, which included requests for the plaintiff's mental health records. The presiding judge, District Judge Julie R. Rubin, referred the discovery dispute to me for resolution. After a telephone conference with counsel for the parties about their dispute, I ordered the plaintiff to supplement his discovery responses. I took under advisement the matter of whether psychotherapy notes from the plaintiff's therapy sessions were subject to disclosure in discovery.

I entered a memorandum order finding that the plaintiff impliedly waived any psychotherapist-patient privilege that would apply to his psychotherapy notes by alleging discrimination based on his mental condition and placing his actual mental condition at issue. However, I gave the plaintiff an opportunity to seek amendment of his pleadings to rely solely upon the contention that the defendant regarded him as having a disability and thereby avoid waiving the psychotherapist-patient privilege. Order supplied. The parties subsequently settled and stipulated to dismissal of the case.

Counsel for Plaintiff:



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Counsel for Defendant:

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 Yedidiah Charnier  
 Jackson Lewis P.C.  
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4. *Harris v. Charles E. Smith Life Communities*, Civ. No. MJM-21-1242, 2022 WL 4777592 (D. Md. Oct. 3, 2022).

The plaintiff filed *pro se* this civil action against her former employer alleging race and age discrimination and retaliation under Title VII of the Civil Rights Act of 1964 and Age Discrimination in Employment Act. The plaintiff, an African American woman, alleged that she suffered discrimination in the workplace while employed by the defendant that ultimately caused her to resign and that managers collaborated to take retaliatory action against her after she filed a discrimination complaint with the Equal Employment Opportunity Commission (“EEOC”). The defendant filed a motion to dismiss the case under Federal Rule of Civil Procedure 12(b)(6) arguing that the plaintiff failed to state any claims for relief.

I granted the motion in part and dismissed the plaintiff’s race and age discrimination claims for the plaintiff’s failure to allege facts showing that any discriminatory adverse employment action was taken against her or that she resigned under conditions that amounted to a discriminatory constructive discharge. I denied the defendant’s motion as to the plaintiff’s retaliation claim, finding that the plaintiff alleged sufficient facts to support a claim that she was reprimanded and warned of potential termination in retaliation for her EEOC complaint. The case is in discovery and remains pending.

Counsel for Plaintiff:

Pro Se

Counsel for Defendant:

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5. *McMillan-McCartney v. McMillan*, Civ. No. MJM-18-3331, 2022 WL 4777769 (D. Md. Sept. 30, 2022).

This civil action involved disputes over residential property owned by the parties, who are siblings, as tenants in common and the administration of their deceased parents' estates. The plaintiff asserted several claims, including a claim for sale of the residential property in lieu of partition as well as contract and quasi-contract causes of action, among other claims. I entered an opinion and order resolving the parties' cross-motions for summary judgment, granting summary judgment in favor of the defendant on one of the plaintiff's quasi-contract claims and in favor of the plaintiff on her claim for sale of the residence. Several claims remained for trial. The parties settled before trial.

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Counsel for Defendant:

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Greenbelt, MD 20770  
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6. *Kubas v. 331B, LLC*, Civ. No. MJM-20-2456, 2022 WL 4608147 (D. Md. Sept. 30, 2022).

The plaintiff filed this civil action against her former employer under Title VII of the Civil Rights Act of 1964 alleging that she was terminated in retaliation for reporting sexual harassment by another employee. The defendant moved for summary judgment on the retaliation claim. I denied the motion, finding several genuine disputes between the parties concerning whether the plaintiff's complaints of sexual harassment were fabricated, whether she was terminated as a result of these complaints, and whether non-retaliatory reasons offered for her termination were pretextual. The matter is pending and scheduled for a jury trial to begin on April 24, 2023.

Counsel for Plaintiff:

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Counsel for Defendant:

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Terry L. Beeman, Jr.  
Buckel, Levasseur, Pillai & Beeman, LLC  
206 Washington Street  
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(301) 759-3700

7. *Optimum Construction, Inc. v. Harbor Business Compliance Corp.*, Civ. No. MJM-21-2432, 2022 WL 4608170 (D. Md. Sept. 30, 2022).

In this civil matter, the plaintiff construction company sued the defendant for failure to provide timely corporate compliance services that allegedly resulted in expiration of the plaintiff's license to perform work in the District of Columbia. The defendant filed a motion to dismiss for improper venue under Federal Rule of Civil Procedure 12(b)(3), arguing that a forum selection provision in an Internet-based terms-of-use contract between the parties required that suit be filed in Pennsylvania.

Upon review of the parties' briefs, I found that resolving the motion may require me to rule on the contractual validity of the web-based terms of use and gave the parties an opportunity to file supplemental briefs on that issue. After reviewing the supplemental briefs, I denied the motion. I found that the defendant failed to show that the plaintiff agreed to the terms of use containing the forum selection clause. This case is in discovery and remains pending.

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(410) 727-2443

Counsel for Defendant:

Christopher J. Conrad  
Marshall, Dennehey, Warner, Coleman & Goggin

100 Corporate Center Drive, Suite 201  
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(717) 651-3531

8. *Lynch v. Walmart, Inc.*, Civ. No. MJM-19-2477 (D. Md.).

In this civil action, the plaintiff claimed that she suffered physical and emotional injuries from a retail store cashier employed by the defendant negligently dropping a carton of iced tea on the plaintiff's foot while checking out groceries. The case was tried before a jury. I resolved several pretrial motions *in limine* and presided at trial. The parties disputed the defendant's liability for the plaintiff's injuries, whether the plaintiff's negligence contributed to her injuries, the severity of her injuries, and what future treatment was medically necessary.

The jury returned a verdict for the defendant, finding that the plaintiff failed to prove the defendant's negligence by a preponderance of the evidence.

Counsel for Plaintiff:

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(410) 451-1777

Counsel for Defendant:

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9. *Rich v. Diana Consulting Servs. LLC*, Civ. No. SAG-21-1670, 2022 WL 1289663 (D. Md. Apr. 29, 2022).

This civil action involved a workplace accident during which the plaintiff was allegedly injured when an employee of the defendant dropped a power drill that struck the plaintiff in the head. The defendant filed a motion to compel a neuropsychological examination of the plaintiff pursuant to Federal Rule of Civil Procedure 35. The presiding judge, District Judge Ellen L. Hollander, referred the motion to me for adjudication. I found a genuine controversy between the parties over whether the plaintiff's subjective complaints regarding her physical injuries were exaggerated or were caused by a psychological condition. On that basis, I found good cause to compel a neuropsychological examination, which, according to the affidavit supplied by the plaintiff's proposed neuropsychologist, could

provide a basis for finding that the plaintiff was malingering or suffering from somatization disorder. I granted the motion. The parties later stipulated to dismissal of the case.

Counsel for Plaintiff:

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Counsel for Defendant:

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10. *Mahdy v. Morgan State Univ.*, Civ. No. SAG-20-2715, 2022 WL 899277 (D. Md. Mar. 28, 2022).

The plaintiff filed *pro se* this civil action under Title VII against her employer alleging discrimination and retaliation. The plaintiff represented herself in the case for several months and litigated discovery issues before obtaining counsel, through whom the plaintiff amended her pleadings and continued to litigate the case. The plaintiff's counsel later filed a motion to withdraw as counsel. The presiding judge, District Judge Stephanie A. Gallagher, referred the motion to me to adjudicate.

In support of the motion, counsel cited the plaintiff's failure to cooperate with counsel's representation and fundamental disagreements between the plaintiff and counsel about the defendant's deposition of the plaintiff, litigation strategy, the legitimacy of counsel's legal advice, and the plaintiff's allegations of misconduct against opposing counsel. On these and other grounds, I found good cause to permit counsel to withdraw and entered a memorandum opinion and order granting the motion. The plaintiff subsequently acquired new counsel. The case remains pending.

Former counsel for Plaintiff:

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Current counsel for Plaintiff:

Pro Se

Counsel for Defendant:

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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. *Carbajal Acevedo v. McCalla et al.*, Civ. No. MJM-22-1157, 2023 WL 1070436 (D. Md. Jan. 27, 2023).

Counsel for Plaintiff:

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Counsel for Defendant:

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2. *Neal v. United States*, Civ. No. MJM-19-1033, 2023 WL 361137 (D. Md. Jan. 23, 2023).

Counsel for Plaintiff:

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Counsel for Defendant:

Molissa H. Farber  
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3. *Guerrero v. Lonza Walkersville, Inc.*, Civ. No. JRR-21-2969, ECF No. 37 (D. Md. Nov. 7, 2022). Order previously supplied in response to Question 13c.

Counsel for Plaintiff:

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4. *Harris v. Charles E. Smith Life Communities*, Civ. No. MJM-21-1242, 2022 WL 4777592 (D. Md. Oct. 3, 2022).

Counsel for Plaintiff:

Pro Se

Counsel for Defendant:

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5. *McMillan-McCartney v. McMillan*, Civ. No. MJM-18-3331, 2022 WL 4777769 (D. Md. Sept. 30, 2022).

Counsel for Plaintiff:

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6. *Kubas v. 331B, LLC*, Civ. No. MJM-20-2456, 2022 WL 4608147 (D. Md. Sept. 30, 2022).

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Counsel for Defendant:

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Terry L. Beeman, Jr.  
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7. *Optimum Construction, Inc. v. Harbor Business Compliance Corp.*, Civ. No. MJM-21-2432, 2022 WL 4608170 (D. Md. Sept. 30, 2022).

Counsel for Plaintiff:



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Counsel for Defendant:

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Camp Hill, PA 17011  
(717) 651-3531

8. *Crystal S. v. Kijakazi*, Civ. No. MJM-20-3717, 2022 WL 4539717 (D. Md. Sept. 28, 2022).

Counsel for Plaintiff:

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Counsel for Defendant:

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9. *Rich v. Diana Consulting Servs. LLC*, Civ. No. SAG-21-1670, 2022 WL 1289663 (D. Md. Apr. 29, 2022).

Counsel for Plaintiff:

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Counsel for Defendant:

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10. *Mahdy v. Morgan State Univ.*, Civ. No. SAG-20-2715, 2022 WL 899277 (D. Md. Mar. 28, 2022).

Former counsel for Plaintiff:

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Current counsel for Plaintiff:

Pro Se

Counsel for Defendant:

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James K. O'Connor  
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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 my knowledge, to date, none of my decisions have been reversed by a

reviewing court or affirmed with significant criticism of my substantive or procedural rulings.

- 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.

To my knowledge, to date, none of my written decisions have been published in a federal caselaw reporter. My formal memorandum opinions are commonly published electronically on Westlaw and/or Lexis. My written decisions on discovery disputes and other non-dispositive matters typically take the form of letter orders, which is a common practice among judges in the District of Maryland. My informal letter orders are not consistently published on Westlaw or Lexis. All of my written decisions, including letter orders, are filed and stored on the court's electronic case management system and are accessible to the public, unless filed under seal for good cause.

- 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.

In accordance with 28 U.S.C. § 455(a), (b), I ensure that no conflict of interest exists before I preside over any matter. I have provided the Office of the Clerk of Court with a list of persons who may not participate in any proceedings before me to avoid any questions as to my impartiality. The Clerk's Office relies on this list to screen for potential conflicts of interest before assigning any matter to me. Additionally, before I preside over any criminal matter, my staff and I screen for potential conflicts of interest. If in my prior employment as an Assistant United States Attorney I personally participated in, or supervised, the criminal investigation or prosecution of any participant in any civil or criminal matter I have been assigned, I refrain from presiding over the matter and request re-assignment to another magistrate judge. These recusals have occurred *sua sponte* in a number of cases and without written order. I also consult and follow guidance from the Code of Conduct for United States Judges and ethics advisory opinions of the Committee on Codes of Conduct in determining whether recusal is appropriate.

I recused myself *sua sponte* in the following matter.

*Biggers v. Baltimore Police Dep't et al.*, Civ. No. DLB-21-3061: This civil matter was assigned to me for mediation. Before the scheduled settlement conference, I discovered that prior counsel for the plaintiff was an individual whom I had prosecuted during my prior employment as an Assistant United States Attorney. Upon making this discovery, I consulted a member of the Committee on Codes of Conduct for an informal opinion about the need for recusal. I also contacted the plaintiff's current counsel to determine whether prior counsel would be entitled to a portion of any settlement payment. After making these inquiries, I requested re-assignment of the matter *sua sponte*. My chambers staff consulted the Clerk's Office about the measures taken to screen the case before it was assigned to me.

My recusal was sought in the following matter.

*United States v. Humphrey Stavrou Associates, Inc., et al.*, Civ. No. ELH-22-2448: This civil matter was assigned to me for mediation. After the assignment was made, counsel for the parties jointly and informally requested re-assignment to another magistrate judge because I had previously worked for the law firm representing some of the defendants. I consulted the chief magistrate judge to discuss the joint request for re-assignment. Although I had no prior personal involvement in the case or in the representation of any defendant in the case, and I did not believe my prior employment created a conflict of interest, I acquiesced in the parties' joint request to ensure that the parties would be comfortable participating in judicial mediation. The matter was re-assigned to another magistrate judge.

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 2011 to 2012, I served as a law clerk to the Honorable Gerald Bruce Lee of the United States District Court for the Eastern District of Virginia.

From 2014 to 2015, I served as a law clerk to the Honorable Andre M. Davis of the United States Court of Appeals for the Fourth 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;

Summer 2010; 2012 – 2014  
Holland & Knight LLP  
800 Seventeenth Street, Northwest, Suite 1100  
Washington, DC 20006  
Associate (2012 – 2014)  
Summer Associate (2010)

2015 – 2022

United States Attorney's Office for the District of Maryland  
 36 South Charles Street, Fourth Floor  
 Baltimore, Maryland 21201  
 Assistant United States Attorney (2015 – 2022)  
 Deputy Chief, Major Crimes Section (2020 – 2022)

- 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 never served as a mediator or arbitrator in alternative dispute resolution proceedings during the time I practiced law as an attorney. I regularly serve as a mediator at settlement conferences in cases assigned to me as part of my judicial duties.

b. Describe:

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

From 2012 through 2014, I was an associate in the Litigation and Dispute Resolution practice of Holland & Knight LLP in Washington, District of Columbia. In my litigation practice, my work included researching and drafting dispositive motions and discovery motions and submitting discovery requests and responses. In one case, I appeared in court to argue a dispositive motion I had authored. I also worked in the area of regulatory compliance and risk management, which involved advising business clients in the development of enterprise-wide compliance programs and crisis management strategies.

From 2015 through 2022, I was a criminal prosecutor in the United States Attorney's Office for the District of Maryland in Baltimore, Maryland. In November 2020, I was appointed Deputy Chief of the Major Crimes Section. I prosecuted several dozen criminal cases in the District of Maryland, handled approximately seven criminal appeals in the United States Court of Appeals for the Fourth Circuit, and supervised numerous grand jury investigations. During this time, I worked closely with agents of numerous federal investigative agencies, including FBI; Homeland Security Investigations; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Postal Inspection Service; Secret Service; Drug Enforcement Administration; IRS Criminal Investigation; Naval Criminal Investigative Service; and Offices of Inspector General of several federal agencies and departments. As a member of the Major Crimes Section in the Criminal Division of the U.S. Attorney's Office, I handled and supervised prosecutions of a range of federal crimes, including sex trafficking, child pornography, bank robbery, financial and identity fraud,

arson, tax fraud, theft of mail, and theft of government property. I also prosecuted illegal firearm possession and drug trafficking offenses.

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

During my period in private practice, between 2012 and 2014, I typically represented business clients as both plaintiffs and defendants in civil litigation. Clients in the area of regulatory compliance and risk management included businesses and educational institutions.

During my time as a federal prosecutor, between 2015 and 2022, I represented the United States.

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

During my period in private practice, between 2012 and 2014, the majority of my practice (approximately 75 percent) was in commercial litigation, and I occasionally appeared in state court.

During my period as a criminal prosecutor, between 2015 and 2022, I frequently appeared in the U.S. District Court for the District of Maryland for proceedings in federal criminal cases, occasionally appeared in the U.S. Court of Appeals for the Fourth Circuit to argue appeals, and occasionally appeared in state court in matters related to a federal criminal investigation.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 90% |
| 2. state courts of record:  | 10% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 10% |
| 2. criminal proceedings: | 90% |

- 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 three cases to verdict and served as associate counsel in each case.

- 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. Ogulana et al.*, Crim. No. CCB-20-285 (D. Md. 2021)

I represented the United States as lead counsel in this federal criminal prosecution, having handled the grand jury investigation and obtained the criminal complaints and indictments. The second superseding indictment charged the defendants with conspiracy to commit bank fraud and mail fraud, access device fraud, and aggravated identity theft involving the use of stolen mail and stolen identities to engage in fraudulent credit card transactions and fraudulent deposits of stolen checks. Defendant Ogulana, a former U.S. Postal Service mail carrier, was also charged with theft and destruction of mail by a postal employee. I advocated for pretrial detention at a detention hearing for defendant Ogulana, but the defendant was ordered released under conditions of supervision. Defendant Oguntuyi initially consented to pretrial detention but later requested release. I prepared and filed a written opposition to his release and advocated for pretrial detention at a subsequent detention hearing, but defendant Oguntuyi was ordered released under condition of supervision.

During the prosecution, I prepared and disclosed discovery, continued supervision of the then-ongoing investigation, and prepared and filed written responses to several pretrial motions, including a motion to suppress statements filed by defendant Ogulana and a motion to sever the trial filed by defendant Oguntuyi. At the pretrial motion hearing, I examined the lead investigator in the case and provided oral argument in opposition to



defendant Ogunlana's suppression motion, which the court denied from the bench. Defendant Oguntuyi's motion for severance was denied as moot based upon an agreement the parties reached to resolve the issue raised in that motion. I prepared and filed pretrial motions *in limine*, which each defendant opposed. In the weeks leading up to trial, my co-counsel and I prepared several witnesses for trial, including several identity-theft victims, and prepared trial exhibits.

Before jury selection, I negotiated a plea agreement with each defendant. Each defendant subsequently entered a guilty plea to several charges in the superseding indictment. I prepared and filed a sentencing memorandum in advance of the sentencing hearing for each defendant. My co-counsel represented the government at the sentencing hearings following my appointment as a magistrate judge.

Dates of representation: 2019 – 2022

Judges:

The Honorable Catherine C. Blake, U.S. District Judge  
The Honorable A. David Copperthite, U.S. Magistrate Judge  
The Honorable J. Mark Coulson, U.S. Magistrate Judge

Co-counsel for the United States:

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(410) 332-0850

2. *United States v. Cormack*, Crim. No. ELH-19-0450, 2021 WL 2187016 (D. Md. May 28, 2021)

I represented the United States as lead counsel in this federal criminal prosecution, having obtained the indictment and superseding indictment from the grand jury. The superseding indictment charged the defendant with receipt and possession of child pornography, in violation of 18 U.S.C. § 2252A(a). During the prosecution, I prepared and disclosed discovery, continued supervision of the then-ongoing investigation, and drafted and filed a written response in opposition to pretrial motions to suppress evidence obtained from the defendant's home, workspace, and work computer. The matter proceeded to an evidentiary hearing on the suppression motions. During the hearing, I examined multiple witnesses, presented evidence, and provided oral argument. After the hearing, the court entered a memorandum opinion finding that the challenged searches were lawful and denied the motions. After the court's ruling, I negotiated terms of a plea agreement with defense counsel, and the defendant entered a guilty plea to receipt and possession of child pornography. I prepared and filed a sentencing memorandum setting forth the government's position on sentencing prior to my appointment as a magistrate judge. The defendant remains pending sentencing.

Dates of representation: 2019 – 2022

Judge:

The Honorable Ellen L. Hollander, U.S. District Judge

Co-counsel for the United States:

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District of Maryland  
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Counsel for Defendant:

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3. *United States v. Parks*, Crim. No. TEJ-18-0317, 2019 WL 2869335 (D. Md. July 3, 2019); 2019 WL 2931460 (D. Md. July 8, 2019); 2019 WL 2995674 (D. Md. July 9, 2019); 849 F. App'x 400 (4th Cir. 2021)

I represented the United States as associate counsel in this federal criminal prosecution. The superseding indictment charged the sole defendant with sex trafficking of multiple minors, in violation of 18 U.S.C. § 1591(a), (b)(2), and (c), and one count of use of

interstate facilities to promote an enterprise involving a prostitution offense, in violation of 18 U.S.C. § 1952(a)(3). Before trial, the defendant filed several pretrial motions, including a motion to suppress statements to law enforcement on two separate dates, a motion for separate trials on the counts of the indictment, and a motion *in limine* to exclude expert testimony on the subculture and business of prostitution and sex trafficking. I handled those three motions, and my co-counsel handled others. At multiple pretrial motion hearings, I presented evidence and oral argument in opposition to the motions, and the District Court denied each of the motions. The defense filed an additional motion in advance of trial to suppress evidence from a cell phone, for which I prepared and filed a written opposition and provided oral argument on the first day of trial. The District Court granted the motion. After the fourth day of evidence, the jury returned guilty verdicts on all counts presented to it. The District Court later imposed a total sentence of 20 years of imprisonment to be followed by five years of supervised release.

After sentencing and judgment, the defendant raised several issues on appeal, and I assisted in the drafting of an appellate brief on behalf of the government. The Court of Appeals affirmed the judgment of the District Court.

Dates of representation: 2019 – 2022

Judges:

The Honorable Thomas E. Johnston, Chief U.S. District Judge, U.S. District Court for the Southern District of West Virginia (sitting by designation in the District of Maryland)  
 The Honorable J. Harvie Wilkinson, U.S. Circuit Judge  
 The Honorable James A. Wynn, Jr., U.S. Circuit Judge  
 The Honorable Stephanie Thacker, U.S. Circuit Judge

Co-counsel for the United States:

Christine Duey  
 [current contact information unavailable]

Counsel for Defendant:

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 Mount Washington Mill  
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 Baltimore, MD 21209  
 (410) 375-7082

4. *United States v. Ravenell et al.*, Crim. No. LO-19-449 (D. Md. 2021)

I represented the United States as associate counsel in this federal criminal prosecution. The second superseding indictment charged defendant Ravenell, a criminal defense attorney, with Racketeer Influenced and Corrupt Organizations Act conspiracy, money laundering conspiracy, narcotics conspiracy, and conspiracy to falsify records and obstruct official proceedings. Two other defendants were charged with conspiracy to falsify records and obstruct official proceedings. During the grand jury investigation, I interviewed witnesses, reviewed documents and information obtained by search warrant, and assisted in preparation of the original indictment and superseding indictment. After charges were filed, I assisted in preparation and production of discovery, drafted and filed pretrial motions and responses to defense motions, and presented oral argument at multiple pretrial motion hearings. I withdrew from the prosecution upon my selection to serve as a magistrate judge and before the matter proceeded to trial.

Dates of representation: 2019 – 2022

Judge:

The Honorable Liam O’Grady, U.S. District Judge, U.S. District Court for the Eastern District of Virginia (sitting by designation in the District of Maryland)

Co-counsel for the United States:

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5. *United States v. O'Day, et al.*, Crim. No. ELH-19-0034; 2020 WL 6383232 (D. Md. Oct. 30, 2020); 2022 WL 14849065 (D. Md. Oct. 25, 2022)

I represented the United States as lead counsel in this federal criminal prosecution, having handled the grand jury investigation and obtained the criminal complaints and indictments. The superseding indictment charged bank fraud conspiracy, bank fraud, and aggravated identity theft based upon the defendants' involvement in an auto loan fraud scheme in Maryland and Georgia. Defendant O'Day was charged in the original indictment, and defendants White and Broomes were subsequently charged by criminal complaint. I coordinated with United States Attorney's Offices in other districts to schedule preliminary hearings for the defendants, each of whom were arrested outside of Maryland. Upon transfer to the District of Maryland, defendants O'Day and Broomes each consented to pretrial detention. I advocated for pretrial detention of defendant White at a detention hearing, and detention was ordered. During the prosecution, I prepared and disclosed discovery, continued supervision of the then-ongoing investigation, and negotiated plea agreements with counsel for each of the three defendants, each of whom subsequently entered guilty pleas to charges in the superseding indictment. I prepared and filed a sentencing memorandum in advance of the sentencing hearing for each defendant and represented the government at each sentencing hearing. Defendant O'Day was sentenced to a total 104-month term of imprisonment, defendant White was sentenced a total 96-month term of imprisonment, and defendant Broomes was sentenced to a 37-

month term of imprisonment. The District Court also ordered restitution and imposed a five-year period of supervised release upon each defendant.

Defendant White subsequently filed several post-sentencing motions, including multiple motions for compassionate release under 18 U.S.C. § 3582(c) and a petition to vacate her sentence under 28 U.S.C. § 2255. I prepared and filed a written response in opposition to each motion. The District Court entered two memorandum opinions denying these motions.

Dates of representation: 2019 – 2022

Judges:

The Honorable Ellen L. Hollander, U.S. District Judge  
The Honorable J. Mark Coulson, U.S. Magistrate Judge

Co-counsel for the United States:

None.

Counsel for Defendants:

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Office of the Federal Public Defender  
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(410) 962-3962

Steven F. Wrobel  
Law Office of Steven Wrobel, LLC  
107 Ridgely Avenue, Suite 9  
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Stuart M. Mones  
Mones Law Group PC  
750 Hammond Drive 12-200  
Sandy Springs, GA 30328  
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6. *United States v. Kadiri*, Crim. No. JKB-17-367, 2020 WL 3498159 (D. Md. Jun. 29, 2020); 771 F. App'x 304 (4th Cir. 2019); 837 F. App'x 1009 (4th Cir. 2021)

I represented the United States in this federal criminal prosecution, joining the prosecution team as associate counsel during preparation for trial. The indictment alleged that, as the operator a tax preparation business, the defendant willfully assisted in the

filing of numerous false tax returns reporting falsely inflated business losses and, for at least three years, failed to file tax returns for her business as required by law. During trial, I examined several witnesses, including a number of the defendant's clients for whom false tax returns were filed and an Internal Revenue Service agent responsible for calculating tax losses resulting from false tax returns filed by the defendant's business. The jury found the defendant guilty of two of the felony counts for assisting in the filing of false tax returns and two of the misdemeanor counts for failing to file corporate tax returns.

I drafted and filed the government's sentencing memorandum and provided oral argument at the sentencing hearing on behalf of the government, including argument regarding disputes over the applicable Sentencing Guidelines. After hearing the parties' arguments with respect to sentencing factors under 18 U.S.C. § 3553(a), the District Court imposed a total sentence of 48 months of imprisonment, reflecting an upward variance from the Guidelines range, and a one-year period of supervised release.

The defendant challenged the sentence on appeal and argued that the District Court procedurally erred by applying a specific Guidelines enhancement she contended was inapplicable. The District Court had applied the challenged enhancement *sua sponte* at sentencing. As lead counsel by this point, I prepared and filed the government's response brief, arguing that the defendant's objection to the challenged enhancement was waived or, alternatively, not preserved for appeal. I argued that the error was harmless and did not warrant resentencing. The Court of Appeals agreed that the defendant failed to show that the error had any effect on her substantial rights and, therefore, she was not entitled to resentencing.

The defendant later filed a *pro se* motion to vacate her sentence pursuant to 28 U.S.C. § 2255, arguing that she was deprived of effective assistance of counsel at sentencing, during plea negotiations, and at other stages of the criminal case. I prepared and filed a response in opposition on behalf of the government. The District Court denied the defendant's § 2255 motion, and the defendant appealed that decision. The Court of Appeals dismissed the appeal.

The defendant also filed a motion for compassionate release, to which I filed a written opposition. The District Court denied the motion.

Dates of representation: 2018 – 2022

Judges:

The Honorable Marvin J. Garbis, Senior U.S. District Judge  
 The Honorable James K. Bredar, Chief U.S. District Judge  
 The Honorable Paul V. Niemeyer, U.S. Circuit Judge  
 The Honorable G. Steven Agee, U.S. Circuit Judge  
 The Honorable Julius N. Richardson, U.S. Circuit Judge

Co-counsel for the United States:

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Counsel for Defendant:

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7. *United States v. Newman*, Crim. No. ELH-16-0528 (D. Md. 2018)

I was assigned this federal prosecution as lead counsel after the matter was charged, and I handled the then-ongoing investigation. The defendant was charged with sex trafficking by force, fraud, or coercion, in violation of 18 U.S.C. § 1591(a). While the case was pending, the defendant filed a motion to vacate his pretrial detention order, to which I prepared and filed a written opposition. I provided oral argument at a hearing on the matter, and the court denied the defendant's request for release.

The defendant subsequently filed pretrial motions to suppress evidence obtained during searches of the hotel room where he was observed staying with a victim. On behalf of the government, I filed a written response in opposition to these motions, arguing that the search warrants were supported by probable cause and that a prior warrantless entry into the hotel room was justified by consent of the victim. Following a hearing, the defendant's suppression motions were denied.

The defendant later filed several additional pretrial motions, including a motion to suppress cell site location information and two motions to suppress statements. I filed a written response in opposition to the motions on behalf of the government. Both parties filed a number of motions *in limine* seeking to admit or exclude certain evidence at trial. Following a pretrial motion hearing, the defendant's suppression motions were denied.

The parties subsequently reached terms of a plea agreement, pursuant to which the defendant entered a guilty plea to two counts of use of interstate facilities to promote a prostitution enterprise and received a sentence of ten years of imprisonment and a three-year period of supervised release.

Dates of representation: 2017 – 2019



Judge:

The Honorable Ellen L. Hollander, U.S. District Judge

Co-counsel for the United States:

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Christine Duey  
[current contact information unavailable]

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Davis and Davis  
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8. *United States v. Murn*, Crim. No. GLR-17-0212 (D. Md. 2018), *aff'd*, 812 F. App'x 146 (4th Cir. 2020)

I represented the United States as lead counsel in this federal criminal prosecution. The superseding indictment charged the defendant with armed bank robbery and attempted bank robbery. The defendant entered a plea of guilty without a plea agreement and admitted commission of the charged robberies, one of which involved use of a fake bomb. I prepared and filed a sentencing memorandum in advance of the sentencing hearing and argued the government's position on the appropriate sentence. At the sentencing hearing, I presented evidence and examined multiple witnesses to establish the seriousness of the defendant's conduct during one of the robberies, at the time of his arrest, and while in custody, which involved assaults on multiple police officers and an escape attempt. I also argued the government's position regarding application of the United States Sentencing Guidelines, which involved several contested issues. Following argument from counsel for both parties, the District Court imposed a total sentence of 144 months of imprisonment to be followed by a five-year period of supervised release. The defendant appealed, challenging the upward variance from the advisory Guidelines range as unreasonable. I filed a brief on behalf of the government arguing that, given the facts of the case, the sentence was not unreasonable. I appeared before the Court of Appeals for oral argument. The Court of Appeals agreed with the government's position and affirmed the judgment of the District Court.

Dates of representation: 2017 – 2020

Judges:

The Honorable George L. Russell, III, U.S. District Judge  
 The Honorable Paul V. Niemeyer, U.S. Circuit Judge  
 The Honorable G. Steven Agee, U.S. Circuit Judge  
 The Honorable Thomas Kleeh, U.S. District Judge (sitting by designation on the Court of Appeals)

Counsel for Defendant:

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9. *United States v. Ramsey et al.*, Crim. No. GLR-15-0651 (D. Md. 2017), *aff'd*, 726 F. App'x 194 (4th Cir. 2018)

I represented the United States as associate counsel in this federal criminal prosecution, having joined the prosecution team during preparation for trial. The indictment alleged defendant Ramsey's involvement in an insurance fraud conspiracy in which the defendant and a co-conspirator J.R. caused fires to be set at multiple insured residences and vehicles and conspired to obtain proceeds from fraudulent insurance claims. The indictment further alleged that defendant Ramsey attempted obstruction of justice and witness tampering after J.R. was criminally charged by offering defendant Roberts to provide false testimony in J.R.'s criminal proceeding, offering to plant evidence to shift blame for some of the arsons, offering to murder a witness, accepting a portion of the fee to murder the witness, and producing a loaded handgun for use in the murder. Defendant Roberts entered a guilty plea for her involvement, and defendant Ramsey proceeded to trial on charges of wire fraud conspiracy, arson, attempted obstruction of justice, attempted witness tampering, and illegal firearm possession.

I prepared multiple witnesses for trial testimony, including arson victims and expert witnesses, and prepared trial exhibits. Defendant Ramsey accepted a plea offer on the third day of trial and entered a guilty plea to charges of arson and attempted witness

tampering. I prepared and filed a sentencing memorandum in advance of the sentencing hearing and represented the government at the hearing. At the sentencing hearing, I examined an arson victim and a firefighter involved in the effort to suppress one of the fires set by the defendant, and argued the government's position on the appropriate sentence. The District Court denied the defendant's request to withdraw his guilty plea, imposed a total sentence of 355 months of imprisonment to be followed by a total five-year term of supervised release, and ordered restitution of \$1,081,608.

Defendant Ramsey appealed the District Court's denial of his request to withdraw his guilty plea. The Court of Appeals affirmed the judgment of the District Court.

Dates of representation: 2016 – 2018

Judge:

The Honorable George Levi Russell, III, U.S. District Judge  
 The Honorable Diana Gribbon Motz, U.S. Circuit Judge  
 The Honorable Allison Kay Duncan, U.S. Circuit Judge  
 The Honorable Barbara Milano Keenan, U.S. Circuit Judge

Co-counsel for the United States:

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Baltimore, MD 21202  
(410) 444-1500

10. *United States v. Aigbekaen, et al.*, Crim. No. JKB-15-0462, 2020 WL 4604506 (D. Md. Apr. 11, 2020); 2021 WL 100813 (D. Md. Jan. 12, 2021); 2021 WL 1816967 (D. Md. May 6, 2021); 2021 WL 1401119 (D. Md. Apr. 14, 2021); 2021 WL 2784613 (D. Md. Jul. 2, 2021); 2021 WL 3603595 (D. Md. Aug. 13, 2021); 2021 WL 5909680 (D. Md. Dec. 14, 2021); 720 F. App'x 156 (4th Cir. 2018); 741 F. App'x 955 (4th Cir. 2018); 943 F.3d 713 (4th Cir. 2019), *cert. denied*, 141 S. Ct. 2871 (2021)

I represented the United States as associate counsel in this federal criminal prosecution. In August 2015, a federal grand jury returned an indictment against defendants Aigbekaen and Greene containing six counts: (1) conspiracy to commit sex trafficking, in violation of 18 U.S.C. § 1594; (2) conspiracy related to interstate prostitution, in violation of 18 U.S.C. § 371; (3) sex trafficking, in violation of 18 U.S.C. § 1591(a); (4) interstate transportation for prostitution, in violation of 18 U.S.C. § 2421; (5) enticement to travel interstate for purposes of prostitution, in violation of 18 U.S.C. § 2422(a); and (6) the use of interstate facilities to promote an enterprise involving a prostitution offense, in violation of 18 U.S.C. § 1952(a)(3).

Following a guilty plea by defendant Greene, a jury trial in the matter proceeded against defendant Aigbekaen in September 2016, and lasted for nine days. During the trial, I examined several civilian and law enforcement witnesses and made closing arguments on behalf of the government. The jury found defendant Aigbekaen guilty of all counts, including sex trafficking of a minor, except that they did not find the element of force, fraud, or coercion. Following the guilty verdicts, I assisted in drafting the government's sentencing submissions. At the sentencing hearing, I presented evidence, examined a witness, and provided oral argument regarding several disputes over the applicable United States Sentencing Guidelines and the appropriate sentence. The District Court granted some of the Guidelines enhancements requested by the government but denied others and imposed a total sentence of 15 years of incarceration to be followed by five years of supervised release.

Defendant Aigbekaen, through counsel, filed an appeal in the U.S. Court of Appeals for the Fourth Circuit. The defendant raised two issues, challenging the admission of historical cell site information at trial, and challenging the examination of a laptop computer seized from him after an inbound international flight, pursuant to border search authority. I assisted in drafting and filing the government's response brief and supplemental briefing ordered by the Court of Appeals, and I appeared on behalf of the government at oral argument. The Court of Appeals held that the government's non-routine examination of the defendant's laptop computer at an international border was not justified by the border search exception to the warrant requirement. However, evidence from the search was not subject to the exclusionary rule because the agents conducting the search reasonably relied on binding judicial precedent. The Court of Appeals affirmed the District Court's judgment.

Following the primary appeal, defendant Aigbekaen filed numerous post-conviction motions in the District Court and appeals of orders denying those motions in the Court of Appeals. I assisted in preparing written responses to some of these post-conviction motions.

Dates of representation: 2016 – 2021

Judge:

The Honorable James K. Bredar, Chief U.S. District Judge  
 The Honorable Diana Gribbon Motz, U.S. Circuit Judge  
 The Honorable James A. Wynn, Jr., U.S. Circuit Judge  
 The Honorable Julius N. Richardson, U.S. Circuit Judge

Co-counsel for the United States:

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 (410) 375-7082

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 6305 Ivy Lane, Suite 700  
 Greenbelt, MD 20770  
 (240) 219-8980

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, I handled a large number of criminal cases from the inception of a grand

jury investigation through sentencing and any post-judgment litigation. I collaborated with law enforcement investigators and other prosecutors in devising investigations into various forms of suspected criminal activity, including child exploitation offenses, human trafficking, financial and identity fraud, murder-for-hire, arson, bank robbery, drug trafficking, illegal firearm possession, smuggling, and theft and fraud against the government. I conducted extensive interviews of victims and witnesses in various settings and locations, prepared applications for search and seizure warrants and other legal process, examined civilian and law enforcement witnesses before grand juries, advised law enforcement agents about investigative tactics and techniques, and prepared charging documents. I participated in all stages of litigating criminal cases. I appeared in court on a regular basis to represent the government and presented evidence and oral argument at detention and bail review hearings, pretrial motion hearings, trials, guilty plea hearings, sentencing hearings, and hearings on violations of supervised release. I filed, opposed, and briefed pretrial and post-judgment motions and sentencing memoranda in many cases.

For several years, I served as Identity Theft Coordinator for the U.S. Attorney's Office ("USAO") in the District of Maryland. In that role, I planned and conducted regular meetings of the Maryland Identity Theft Working Group, which was comprised of federal, state, and local prosecutors and law enforcement agents, as well as private-sector fraud investigators. I conducted and moderated trainings and presentations at these meetings and at an annual training program for the working group. I also conducted intake of identity theft cases presented to the USAO for prosecution and assessed the merits of these cases against USAO's policies and priorities to determine whether to authorize the cases for investigation by the grand jury.

From 2020 until my appointment as a magistrate judge, I served as Deputy Chief of USAO's Major Crimes Section. In that role, I supervised line prosecutors within the section, provided guidance when non-routine issues arose in their cases, and reviewed and approved proposed authorizations of federal investigations, charging documents, search and seizure warrant applications, and plea offers. I participated in regular meetings with the United States Attorney and USAO supervisors, and with line prosecutors and civil litigation attorneys handling civil rights cases.

While in private practice, I represented business clients in pretrial stages of civil litigation and in the area of regulatory compliance and risk management. In the area of compliance, I assisted in the preparation of presentations on crisis management and risk management to clients and potential clients of the law firm. I also prepared advisory legal memoranda to law firm partners and clients about specific legal issues.

I have never performed lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I taught mathematics courses as a teacher at Lee Senior High School in Marianna, Lee County, Arkansas from 2001 through 2003, primarily Geometry and Algebra II. I am unable to locate any syllabi.

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

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).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

Potential conflicts of interest may be presented in cases involving persons who were the subjects of investigations or prosecutions I handled or supervised as an Assistant United States Attorney between 2015 and 2022. If confirmed as a district judge, my chambers staff and I would continue to identify any such cases assigned to me at the point of assignment and before I preside over any

proceedings in any such cases and recuse myself from these cases *sua sponte*. I would also recuse myself from cases involving any party, counsel, or witness who is a relative or close friend, or in any other instance for which the Code of Conduct for United States Judges and opinions of the Committee on Codes of Conduct call for recusal.

- 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 consulting and adhering to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other laws, rules, and practices governing such circumstances. I would continue to utilize the court's internal screening procedures to identify and avoid potential conflicts of interest in case assignments. If a potential or actual conflict of interest arises in any case in which I have taken an active role, I will inform counsel and the parties, request their positions on the matter, and recuse myself if appropriate.

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

In private practice, I participated in the law firm's representation of an indigent criminal defendant in a post-conviction appeal.

During my first judicial clerkship, I worked closely with District Judge Gerald Bruce Lee and the Just the Beginning organization to coordinate a nation-wide judicial internship program that placed dozens of law students with diverse racial and socioeconomic backgrounds in summer internships with federal judges. I continued assisting this program while in private practice by screening applications to the program, conducting interviews with applicants, and providing advice to applicants about preparing for interviews with judges and working in judges' chambers.

As a prosecutor, I authorized and handled human trafficking investigations and prosecutions involving socially and economically disadvantaged victims, which regularly involved connecting victims to social and health services and resources.

During law school, I provided legal services to indigent incarcerated persons as a member of two legal clinics. As a member of one of the two clinics, I participated in the investigation of conditions of confinement at a state super-maximum security prison and researched the humanitarian impacts of the prison's practice of solitary confinement with the goal of seeking reform and oversight of the institution.

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 November 2020, a notice was posted on Senator Cardin's website announcing upcoming vacancies on the U.S. District Court for the District of Maryland. In December 2020, I submitted an application to a judicial selection committee in response to the notice. Members of the committee interviewed me on December 18, 2020.

In 2022, while serving as magistrate judge in the District of Maryland, I became aware of upcoming vacancies among the district judges. During a meeting with a member of Senator Cardin's judicial selection committee in December 2022, I expressed my interest in nomination for the office of district judge and supplemented my previous application materials. I was interviewed by Senators Cardin and Van Hollen on December 20, 2022. I received an email from an official from the Office of the White House Counsel on December 22, 2022, advising me that I had been recommended as a potential candidate and requesting an interview. On December 23, 2022, I was interviewed by officials from the White House Counsel's Office.

Since December 23, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 20, 2023, the President announced his intent to nominate me.

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

No.

**Senator Lindsey Graham, Ranking Member**  
**Questions for the Record**  
**Mr. Jerry Edwards, Jr.**

**Nominee to be a United States District Judge for the Western District of Louisiana**

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.”
2. When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s stock response was, “They can’t catch ’em all.” Is this an appropriate approach for a federal judge to take?
3. Please define the term “living constitution.”
4. Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a “living constitution”?
5. Under Supreme Court and Fifth 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?
6. How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?
7. 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?
8. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.
9. Please identify a Fifth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.
10. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.
11. Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?
12. What is the operative standard for determining whether a statement is not protected speech under the “fighting words” doctrine?

13. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?
14. 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 *Griswold v. Connecticut* correctly decided?
  - d. Was *Roe v. Wade* correctly decided?
  - e. Was *Planned Parenthood v. Casey* correctly decided?
  - f. Was *Gonzales v. Carhart* correctly decided?
  - g. Was *District of Columbia v. Heller* correctly decided?
  - h. Was *McDonald v. City of Chicago* correctly decided?
  - i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
  - j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
  - k. Was *Dobbs v. Jackson Women's Health* correctly decided?
15. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?
16. 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?
17. 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?

18. 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.
  
19. 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?
  - 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?
  
20. 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?

21. 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).
22. 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?
23. 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?
24. 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.
25. 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?
26. 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?
27. Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?
  - a. If yes,
    - i. Who?
    - ii. What advice did they give?
    - iii. Did they suggest that you omit any cases?
28. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.
29. Please explain, with particularity, the process whereby you answered these questions.

**Senate Judiciary Committee  
Nominations Hearing  
July 12, 2023  
Questions for the Record  
Senator Amy Klobuchar**

**For Jerry Edwards Jr., nominee to be United States District Court Judge for the Western District of Louisiana**

Since 2019, you have served in the U.S. Attorney's Office of the Western District of Louisiana and served as Chief of the Civil Division for two years. During your tenure as an Assistant U.S. Attorney you supervised lawyers in the Appellate, Criminal, and Civil divisions, and tried nine cases to verdict.

- How will these experiences inform your approach if you are confirmed as a federal district court judge?

**Senator Mike Lee**  
**Questions for the Record**  
**Jerry Edwards Jr., Nominee to the United States District Court for the**  
**Western District of Louisiana**

1. How would you describe your judicial philosophy?
2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?
3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?
4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?
5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?
  - a. Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?
6. What are the constitutional requirements for standing?
7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?
8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?
9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?
10. What rights are protected under substantive due process?
11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?
12. What are the limits on Congress’s power under the Commerce Clause?
13. What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?

14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?
15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?
16. What role should empathy play in a judge's consideration of a case?
17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?
18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?
19. How would you explain the difference between judicial review and judicial supremacy?
20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?
21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.
22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?
23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?



24. The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition? If not, how would you define equity?
25. Is there a difference between “equity” and “equality?” If so, what is it?
26. Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?
27. How do you define “systemic racism?”
28. How do you define “critical race theory?”
29. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?
30. For three years, you were listed as the counsel of record in *Smith et al. v. Concordia Parish*, a desegregation case against a local charter school. In multiple filings in this case you argued that blatant racial balancing (i.e. giving lottery preferences based on race or reserving seats for individuals based on their race) is constitutional. Can you explain in more detail the reasoning behind this argument?
31. Would the Supreme Court’s recent decision in the *Students for Fair Admission* case have changed the way you handled the *Smith* case as Assistant US attorney?
32. In another school desegregation case, *Thomas v. St. Martin Parish School Board*, you recommended closing a historically white school as a “practical measure” to “immediately eliminate it as a vestige of the prior de jure system.” The district court ruled against this recommendation and called it “harsh” and “extreme.” Why did you feel that closing the school was an appropriate recommendation?

**SENATOR TED CRUZ**  
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Jerry Edwards Jr., nominated to be United States District Judge for the Western District of Louisiana**

**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?
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?
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.
4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an "originalist"?
5. Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?
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?
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?
8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?
9. Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?
  - a. Was it correctly decided?
10. Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?
  - a. Was it correctly decided?

11. Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?
  - a. Was it correctly decided?
12. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?
  - a. What are the policy rationales underlying such a presumption?
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?
14. Is it ever permissible for the government to discriminate against religious organizations or religious people?
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.
16. Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom*.
17. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?
18. Explain your understanding the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.
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?
  - a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?

- b. Can courts decide that anything could constitute an acceptable “view” or “interpretation” of religious and/or church doctrine?
  - c. Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?
- 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.
- 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.
- 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.
- 23. Please explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Kennedy v. Bremerton School District*.
- 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*.
- 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?
- 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?
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?
  28. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, including giving a “plus” factor to certain applicants based on their race, should you be confirmed?
  29. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?
  30. Is the criminal justice system systemically racist?
  31. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.
  32. In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?
  33. What do you understand to be the original public meaning of 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*?
  35. Do you personally own any firearms? If so, please list them.
  36. Have you ever personally owned any firearms?

37. Have you ever used a firearm? If so, when and under what circumstances?
38. Is the ability to own a firearm a personal civil right?
39. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?
40. Does the right to own a firearm receive less protection than the right to vote under the Constitution?
41. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.
42. Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.
43. Does the President have the authority to abolish the death penalty?
44. Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.
45. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?
46. You have been involved in litigation against Louisiana charter schools involving race-based admissions? Did the charter school that you sued segregate students based on race?
47. Do you agree with Justices Clarence Thomas and John Marshall Harlan that our Constitution is colorblind?
48. Why should the government eschew individual merit in favor of skin color?
49. What was the holding of Justice Powell's plurality opinion in *Bakke v. Regents of the University of California*?
50. In 2021, you defended the Biden administration's Covid-19 vaccine mandate for federal contractors. In your opposition brief, you argued that the

President, in his capacity as “CEO of the Executive Branch as a market participant,” had the “unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases.”

- a. Under your argument, does the President have any limiting principle under the Procurement Act?
- b. It would seem that you argued that the President has unrestricted power to use procurement regulations to reach through an employing contractor to force a vaccine mandate on *individual employees*. Is that correct? If not, explain.



**Senator John Kennedy  
Questions for the Record**

**Mr. Jerry Edwards**

1. Please describe your judicial philosophy. Be as specific as possible.
2. Do you believe the meaning of the Constitution is immutable or does it evolve over time?
3. Please describe how you would determine the meaning of an ambiguous term or phrase in a statute or legal document.
4. Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?
5. Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?
6. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?
7. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?
8. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.
9. How does the judicial branch decide when an agency has exercised more authority than Congress delegated or otherwise exceeded its rulemaking powers?
10. In *Gundy v. United States*, 588 U.S. \_\_\_\_ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?
11. Does the meaning of the Eighth Amendment change over time? Why or why not?
12. Is the death penalty constitutional?
13. Please describe the legal basis that allows federal courts to issue universal injunctions.
14. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.

**Questions from Senator Thom Tillis**  
**for Jerry Edwards, Jr. Nominee to be United**  
**States District Court Judge for the Western**  
**District of Louisiana**

1. Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?
2. What is judicial activism? Do you consider judicial activism appropriate?
3. Do you believe impartiality is an aspiration or an expectation for a judge?
4. Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?
5. Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?

6. Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?
7. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?
8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?
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?
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?
11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

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?
13. Do you believe the current patent eligibility 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?
14. 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?
- b. Please describe any particular experiences you have had 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?
- 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?

15. 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 reported that 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?
- 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?
- 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?

16. 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?

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?

17. 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 this practice.

- a. Do you see “judge shopping” and “forum shopping” as a problem in litigation?
  - b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?
  - 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?
  - d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?
18. 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?

19. 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?

**Senator Lindsey Graham, Ranking Member**  
**Questions for the Record**  
**Philip S. Hadji**  
**Nominee to be a Judge for the Court of Federal Claims**

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.”
2. When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s stock response was, “They can’t catch ’em all.” Is this an appropriate approach for a federal judge to take?
3. Please define the term “living constitution.”
4. Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a “living constitution”?
5. How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?
6. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.
7. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.
8. Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?
9. What is the operative standard for determining whether a statement is not protected speech under the “fighting words” doctrine?
10. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?
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 *Griswold v. Connecticut* correctly decided?
  - d. Was *Roe v. Wade* correctly decided?
  - e. Was *Planned Parenthood v. Casey* correctly decided?
  - f. Was *Gonzales v. Carhart* correctly decided?

- g. Was *District of Columbia v. Heller* correctly decided?
  - h. Was *McDonald v. City of Chicago* correctly decided?
  - i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
  - j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
  - k. Was *Dobbs v. Jackson Women's Health* correctly decided?
12. 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?
13. 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?
14. 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.
15. 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?
  - 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?
16. 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?
17. Please describe the selection process that led to your nomination to be a Court of Federal Claims Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).
18. 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?
19. 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?
20. 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.

21. 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?
22. 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?
23. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.
24. Please explain, with particularity, the process whereby you answered these questions.

**Senate Judiciary Committee  
Nominations Hearing  
July 12, 2023  
Questions for the Record  
Senator Amy Klobuchar**

**For Philip Serge Hadji, nominee to be Judge for the United States Court of Federal Claims:**

The Court of Federal Claims was formed to hear claims by people against the federal government, which include takings claims, government contracts, and military pay claims. It has been referred to as “the People’s Court.”

- In your view, does the Court of Federal Claims have a special duty to *pro se* litigants who represent themselves before the court, but may be unfamiliar with litigation or court procedure?
- What steps will you take to ensure that *pro se* litigants receive a fair hearing in your court?

On the side of the Court of Federal Claims courthouse is a quote from Lincoln that says: “It is as much the duty of government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals.”

- Can you discuss the importance of the role of the Court of Federal Claims, and if confirmed how you intend to apply the sentiment expressed by Lincoln?

**Senator Mike Lee**  
**Questions for the Record**  
**Philip Hadji, Nominee to the United States Court of Federal Claims**

1. What legal experience do you think is necessary for a person to make a good Court of Federal Claims judge, and what have you done to gain this experience?
2. How would you describe your judicial philosophy?
3. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?
4. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?
5. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?
6. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?
  - a. Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?
7. What are the requirements for standing in the Court of Federal Claims?
8. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?
9. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?
10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?
11. What rights are protected under substantive due process?
12. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?
13. What are the limits on Congress’s power under the Commerce Clause?

14. What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?
15. How would you describe the role that checks and balances and separation of powers play in the Constitution’s structure?
16. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?
17. What role should empathy play in a judge’s consideration of a case?
18. How would you explain the difference between judicial review and judicial supremacy?
19. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that “If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.” How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?
20. What role does precedent play in the opinions of a Court of Federal Claims judge?
21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that’s important to keep in mind when judging.
22. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?
23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant’s group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges’ sentencing analysis?
24. The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color;



members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition? If not, how would you define equity?

25. Is there a difference between “equity” and “equality?” If so, what is it?
26. Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?
27. How do you define “systemic racism?”
28. How do you define “critical race theory?”
29. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?
30. The Court of Federal Claims has been called “the keeper of the Nation’s conscience” and the “People’s court.” How do you see the court fulfilling such a role? How do you see yourself fulfilling this role if you are confirmed?

**Questions from Senator Thom Tillis**  
**for Philip S. Hadji, Judicial Nominee to the**  
**United States Court of Federal Claims**

1. Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?
2. What is judicial activism? Do you consider judicial activism appropriate?
3. Do you believe impartiality is an aspiration or an expectation for a judge?
4. Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?
5. Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?
6. Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?

7. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?
8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?
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?
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?
11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?
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?

13. Do you believe the current patent eligibility 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?
14. 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?

b. Please describe any particular experiences you have had 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?

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?

15. 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 reported that 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?
- 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?
- 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?

16. 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?
  - 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?
17. 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 this practice.

a. Do you see “judge shopping” and “forum shopping” as a problem in litigation?

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

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?

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

18. 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?



19. 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?

**Senator Lindsey Graham, Ranking Member**  
**Questions for the Record**  
**Mr. Brandon Scott Long**

**Nominee to be a United States District Judge for the Eastern District of Louisiana**

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.”
2. When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s stock response was, “They can’t catch ’em all.” Is this an appropriate approach for a federal judge to take?
3. Please define the term “living constitution.”
4. Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a “living constitution”?
5. According to your questionnaire, you served on detail to the FBI in 2020-2021 and were the Acting Chief of Staff to Director Wray for short time that included January 2021.
  - a. Please describe your duties as Deputy Chief of Staff and Acting Chief of Staff.
  - b. Please describe your duties and role regarding the events that occurred on January 6<sup>th</sup> and the subsequent investigation.
  - c. Were you involved with any decision to investigate (or not investigate) allegations against or involving Hunter Biden?
    - i. If yes, please explain.
6. Under Supreme Court and Fifth 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?
7. How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?
8. 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?
9. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.

10. Please identify a Fifth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.
11. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.
12. Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?
13. What is the operative standard for determining whether a statement is not protected speech under the “fighting words” doctrine?
14. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?
15. 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 *Griswold v. Connecticut* correctly decided?
  - d. Was *Roe v. Wade* correctly decided?
  - e. Was *Planned Parenthood v. Casey* correctly decided?
  - f. Was *Gonzales v. Carhart* correctly decided?
  - g. Was *District of Columbia v. Heller* correctly decided?
  - h. Was *McDonald v. City of Chicago* correctly decided?
  - i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
  - j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
  - k. Was *Dobbs v. Jackson Women’s Health* correctly decided?
16. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?
17. 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?

18. 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?
  
19. 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.
  
20. 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?
  - 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?
  
21. 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?
22. 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).
  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?
  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?
  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, or any other such Arabella dark-money fund that is still shrouded.
  26. 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?
  27. 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?
  28. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.
  29. Please explain, with particularity, the process whereby you answered these questions.

**Senate Judiciary Committee  
Nominations Hearing  
July 12, 2023  
Questions for the Record  
Senator Amy Klobuchar**

**For Brandon Scott Long, nominee to be United States District Court Judge  
for the Eastern District of Louisiana**

You served as Deputy Chief of Staff and eventually Acting Chief of Staff to F.B.I. Director Christopher Wray. You have also served as an Assistant United States Attorney for nearly 12 years, both the Eastern District of Louisiana and the District of Columbia.

- How have these experiences informed your view of the criminal justice system?

Federal district court judges manage a large number of cases at one time that touch a wide range of areas of the law, while also ensuring that the litigants who appear before them feel that they have had their day in court.

- How have you approached areas of the law that you were unfamiliar with, and what in your background has prepared you to manage a federal district court judge's docket?

**Senator Charles Grassley Questions for the Record**

**July 12, 2023**

**Brandon Long, Nominee for U.S. District Court for the Eastern District of Louisiana**

1. On January 23, 2023, the FBI Richmond, Virginia field office issued a report, with little or no basis or supporting examples, linking traditional Catholic churches to racial and ethnic violent extremism.<sup>1</sup> The report suggested that FBI agents should infiltrate Catholic churches to find informants and gather information about their activities. After the report was brought to light, Attorney General Garland said it was “appalling” and “inappropriate,” and the FBI withdrew the report.<sup>2</sup> You nonetheless failed to denounce the report during your July 12, 2023, nomination hearing before the Senate Judiciary Committee.
  - a. During your time as Deputy Chief of Staff and Acting Chief of Staff for FBI Director Chris Wray, did you become aware of any discussions, proposals and/or communications related to the FBI investigating and infiltrating Catholic churches to gather information on violent extremism? If so, what actions did you take to stop that improper FBI activity?
  - b. Is the Richmond field office report “appalling” and “inappropriate”? If not, why not?
  - c. Do you believe that it is proper for the FBI to target and place informants in Catholic churches to investigate the exercise of their First Amendment activity? If so, please explain.
2. Did you have any involvement, awareness and/or communications relating to any aspect of the Hunter Biden investigative matter, and related matters, while at the FBI?

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<sup>1</sup> Senator Charles E. Grassley and Senator Lindsey O. Graham, *Letter to Attorney General Garland and FBI Director Chris Wray*, (Mar. 1, 2023)

[https://www.grassley.senate.gov/imo/media/doc/grassley\\_graham\\_to\\_doj\\_fbi\\_richmond\\_fbi\\_catholic\\_report.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley_graham_to_doj_fbi_richmond_fbi_catholic_report.pdf).

<sup>2</sup> Senate Committee on the Judiciary, *Oversight of the Department of Justice*, (Mar. 1, 2023)

<https://www.judiciary.senate.gov/committee-activity/hearings/02/22/2023/oversight-of-the-department-of-justice>.

**Senator Mike Lee**  
**Questions for the Record**  
**Brandon Long, Nominee to the United States District Court for the Eastern**  
**District of Louisiana**

1. How would you describe your judicial philosophy?
2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?
3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?
4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?
5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?
  - a. Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?
6. What are the constitutional requirements for standing?
7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?
8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?
9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?
10. What rights are protected under substantive due process?
11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?
12. What are the limits on Congress’s power under the Commerce Clause?
13. What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?



14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?
15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?
16. What role should empathy play in a judge's consideration of a case?
17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?
18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?
19. How would you explain the difference between judicial review and judicial supremacy?
20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?
21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.
22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?
23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

24. The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition? If not, how would you define equity?
25. Is there a difference between “equity” and “equality?” If so, what is it?
26. Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?
27. How do you define “systemic racism?”
28. How do you define “critical race theory?”
29. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?
30. You served as Acting Chief of Staff to FBI Director Christopher Wray from December 2020 to January 2021, a time period which captures the events that took place at the capitol on January 6<sup>th</sup>. What were your responsibilities during that time and what internal communications took place on January 6<sup>th</sup>?

**SENATOR TED CRUZ**  
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Brandon Scott Long, nominated to be United States District Judge for Eastern District of Louisiana**

**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?
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?
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.
4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an "originalist"?
5. Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?
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?
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?
8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?
9. Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?
  - a. Was it correctly decided?
10. Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?
  - a. Was it correctly decided?

11. Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?
  - a. Was it correctly decided?
12. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?
  - a. What are the policy rationales underlying such a presumption?
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?
14. Is it ever permissible for the government to discriminate against religious organizations or religious people?
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.
16. Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom*.
17. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?
18. Explain your understanding the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.
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?
  - a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?

- b. Can courts decide that anything could constitute an acceptable “view” or “interpretation” of religious and/or church doctrine?
  - c. Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?
- 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.
- 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.
- 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.
- 23. Please explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Kennedy v. Bremerton School District*.
- 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*.
- 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?
- 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?
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?
  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?
  29. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?
  30. If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?
  31. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.
  32. In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?
  33. What do you understand to be the original public meaning of 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*?
  35. Do you personally own any firearms? If so, please list them.
  36. Have you ever personally owned any firearms?

37. Have you ever used a firearm? If so, when and under what circumstances?
38. Is the ability to own a firearm a personal civil right?
39. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?
40. Does the right to own a firearm receive less protection than the right to vote under the Constitution?
41. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.
42. Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.
43. Does the President have the authority to abolish the death penalty?
44. Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.
45. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?
46. In your questionnaire and again during your testimony you indicated that you served as Deputy and Acting Chief of Staff for FBI Director Wray. In this capacity, you noted that you, "worked primarily on policy, public affairs, and administrative matters."
  - a. What policy matters did you work on that affected the Federal Bureau of Investigation? Be as specific and detailed as possible.
  - b. What notable public statements did you prepare? Be as thorough as possible.
  - c. As Acting Chief of Staff, did you accompany Director Wray on briefings and trips?



- d. As then-Acting Chief of Staff, were you aware of the FD-1023 outlining potential bribery allegations against President Biden?
  - e. Was the FBI in possession of the report and or the recordings on the Biden family bribery allegations during your tenure?
  - f. Have you listened to the seventeen voice recordings between the Burisma informant and the Biden family, or are you otherwise familiar with their contents?
47. On October 19, 2020, just weeks before the 2020 Presidential Election, fifty one former top intelligence officials signed a letter saying that the contents of Hunter Biden's laptop—which was in the FBI's possession for almost a year by that point—had “all the classic earmarks of a Russian information operation.” Whistleblowers have subsequently confirmed the FBI had verified the laptop's contents as genuine as far back as 2019.
- a. Given that the FBI knew that these fifty one intelligence officials were not being truthful regarding laptop's authenticity, why did the FBI choose to remain silent about the authenticity of the Hunter Biden's laptop in its October 20, 2020 letter on the matter?
  - b. Were you involved in any decision making process regarding either the Hunter Biden laptop investigation or the decision to not verify the laptop's authenticity prior to the 2020 election?
  - c. Did you participate in *any* meetings regarding the Hunter Biden laptop?
48. During your July 12, 2023 confirmation hearing, you were unwilling to say whether a January 2023 FBI memo detailing efforts to infiltrate and develop sources within traditional Catholic churches was appropriate. You refused to denounce these efforts even when the Attorney General himself called the memo “appalling” and “inappropriate.”
- a. Was the Attorney General incorrect when he referred to the January 2023 memo as “appalling” and “inappropriate”?
  - b. Do you believe that targeting people a specific religious faith for criminal investigation is consistent with equal justice under the law?

- c. Is it consistent with the First Amendment?

**Senator John Kennedy  
Questions for the Record**

**Mr. Brandon Long**

1. Please describe your roles as Deputy Chief of Staff and Acting Chief of Staff to Director Christopher Wray at the Federal Bureau of Investigation (“FBI” or “Bureau”) from 2020 to 2021.
  - a. Were you in the operational chain of command or did you exercise decisional authority on behalf of the Bureau leading up to the January 6, 2021 attack on the U.S. Capitol, during the attack, or in the Bureau’s response?
  - b. Were you in the operational chain of command or did you exercise decisional authority in any investigation involving Hunter Biden?
  - c. Were you in the operational chain of command or did you exercise decisional authority regarding U.S. Attorney David Weiss’ alleged request for special counsel status as IRS whistleblowers claim in connection with the Hunter Biden federal tax investigation?
  - d. Were you in the operational chain of command or did you exercise decisional authority related to “threat tagging” of parents at local school board meetings across the country as potential domestic terrorists?
  - e. In relation to the above question, do you believe parents peacefully expressing concerns about their child’s education at local school board meetings should be labeled or investigated as ‘domestic terrorists’?
  - f. Were you in the operational chain of command or did you exercise decisional authority regarding any Bureau investigation into pro-life organizations in connection with domestic terrorism?
  - g. In your hearing, a senator asked about your awareness of a memo authored by an FBI field office regarding the targeting of Catholic churches in an effort to uncover domestic extremism, despite the fact that you were no longer with the FBI when the field office issued it. Did you have any knowledge of or involvement with the preparation of this memo prior to your departure from the Bureau?
  - h. The Bureau subsequently retracted the memo detailed in the question above. Do you agree with this decision?
  - i. In relation to question 1(h), do you believe the FBI suffers from anti-Catholic bias?
  - j. In relation to question 1(h), is targeting a group of people based solely on their religion an appropriate tactic by a federal law enforcement agency?

- k. Have you been contacted by investigators in the House or Senate probing allegations of misconduct at the FBI?
  - l. Have you participated in any congressional investigation probing allegations of misconduct at the FBI as witness or otherwise?
2. Please describe your judicial philosophy. Be as specific as possible.
  3. Do you believe the meaning of the Constitution is immutable or does it evolve over time?
  4. Please describe how you would determine the meaning of an ambiguous term or phrase in a statute or other legal document.
  5. Should a judge look beyond the text of a law or regulation, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?
  6. Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute or regulation?
  7. Is there ever an appropriate circumstance in which a district court judge may ignore or circumvent precedent set by the circuit court within which it sits or the U.S. Supreme Court?
  8. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.
  9. How does the judicial branch decide when an agency has exercised more authority than Congress delegated or otherwise exceeded its rulemaking powers?
  10. In *Gundy v. United States*, 588 U.S. \_\_\_\_ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?
  11. Does the meaning of the Eighth Amendment change over time? Why or why not?
  12. Is the death penalty constitutional?
  13. Please describe the legal basis that allows federal courts to issue universal injunctions.
  14. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.

**Questions from Senator Thom Tillis**  
**for Brandon Scott Long Nominee to be United**  
**States District Court Judge for the Eastern**  
**District of Louisiana**

1. Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?
2. What is judicial activism? Do you consider judicial activism appropriate?
3. Do you believe impartiality is an aspiration or an expectation for a judge?
4. Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?
5. Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?

6. Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?
7. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?
8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?
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?
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?
11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

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?
13. Do you believe the current patent eligibility 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?
14. 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?
  - b. Please describe any particular experiences you have had 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?
  - 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?
15. 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 reported that 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?
- 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?
- 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?

16. 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?

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?

17. 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 this practice.

- a. Do you see “judge shopping” and “forum shopping” as a problem in litigation?
  - b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?
  - 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?
  - d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?
18. 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?

19. 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?

Senate Judiciary Committee Hearing  
“Nominations”  
Questions for the Record for Brandon Long  
to be United States District Judge for the Eastern District of Louisiana

QUESTIONS FROM SENATOR BLACKBURN

1. At your confirmation hearing on July 12, 2023, you declined to answer questions about your involvement in various matters during your time as Deputy Chief of Staff and Acting Chief of Staff to Federal Bureau of Investigation (FBI) Director Christopher Wray. In declining to answer such questions, you cited the Code of Judicial Conduct and your current role at the Department of Justice (DOJ), neither of which preclude you from answering questions about your role at the FBI.
  - a. Please state below any meeting you participated in related to any of the following topics:
    - i. the Black Lives Matter protests that occurred during the summer of 2020
    - ii. the Hunter Biden laptop incident that was publicized in October 2020
    - iii. the 2020 United States presidential election
    - iv. President Donald J. Trump.
  - b. Please provide any email correspondence you sent or received related to any of the following topics:
    - i. the Black Lives Matter protests that occurred during the summer of 2020
    - ii. the Hunter Biden laptop incident that was publicized in October 2020
    - iii. the 2020 United States presidential election
    - iv. President Donald J. Trump.
  - c. Please provide any memoranda you drafted, sent, or received related to any of the following topics:
    - i. the Black Lives Matter protests that occurred during the summer of 2020
    - ii. the Hunter Biden laptop incident that was publicized in October 2020
    - iii. the 2020 United States presidential election

- iv. President Donald J. Trump.
- d. Please state whether you participated in any phone conversation related to any of the following topics:
  - i. the Black Lives Matter protests that occurred during the summer of 2020
  - ii. the Hunter Biden laptop incident that was publicized in October 2020
  - iii. the 2020 United States presidential election
  - iv. President Donald J. Trump.
- e. Please provide any other document or communication you drafted, sent, or received related to any of the following topics:
  - i. the Black Lives Matter protests that occurred during the summer of 2020
  - ii. the Hunter Biden laptop incident that was publicized in October 2020
  - iii. the 2020 United States presidential election
  - iv. President Donald J. Trump.

In responding to each of the above requests, please provide all documents in your possession, custody, and control (including, but not limited to, email correspondence, text messages, instant messages, memoranda, and meeting notes) containing any of the following terms:

- i. "Hunter Biden"
- ii. "Hunter"
- iii. "Black Lives Matter"
- iv. "BLM"
- v. "2020 riots"
- vi. "2020 protests"
- vii. "2020 election"
- viii. "2020 presidential election"
- ix. "2020 US presidential election"
- x. "2020 U.S. presidential election"
- xi. "2020 United States presidential election"
- xii. "Donald J. Trump"
- xiii. "Donald Trump"
- xiv. "Trump."

**Senator Lindsey Graham, Ranking Member**  
**Questions for the Record**  
**Judge Matthew James Maddox**  
**Nominee to be a United States District Judge for the District of Maryland**

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.”
2. When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s stock response was, “They can’t catch ’em all.” Is this an appropriate approach for a federal judge to take?
3. Please define the term “living constitution.”
4. Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a “living constitution”?
5. Under Supreme Court and Fourth 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?
6. Please describe your views regarding mandatory minimum sentences.
7. How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?
8. 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?
9. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.
10. Please identify a Fourth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.
11. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.
12. Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?

13. What is the operative standard for determining whether a statement is not protected speech under the “fighting words” doctrine?
14. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?
15. 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 *Griswold v. Connecticut* correctly decided?
  - d. Was *Roe v. Wade* correctly decided?
  - e. Was *Planned Parenthood v. Casey* correctly decided?
  - f. Was *Gonzales v. Carhart* correctly decided?
  - g. Was *District of Columbia v. Heller* correctly decided?
  - h. Was *McDonald v. City of Chicago* correctly decided?
  - i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
  - j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
  - k. Was *Dobbs v. Jackson Women’s Health* correctly decided?
16. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?
17. 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?
18. 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?
19. 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.
20. 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?
  - 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?
21. 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?
22. 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).
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?
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?
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, or any other such Arabella dark-money fund that is still shrouded.
26. 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?
27. 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?
28. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.
29. Please explain, with particularity, the process whereby you answered these questions.

**Senate Judiciary Committee  
Nominations Hearing  
July 12, 2023  
Questions for the Record  
Senator Amy Klobuchar**

**For Matthew James Maddox, nominee to be United States District Court  
Judge for the District Court of Maryland**

Last year, you were appointed by judges on the United States District Court for the District of Maryland to serve as a magistrate judge. In that role you authored 22 decisions, none of which have been reversed by a reviewing court.

- How has your experience as a magistrate judge informed your view on the role of a federal district court judge?
- What steps have you taken to ensure that those who appear before you have confidence that the court reached a fair and just decision, regardless of the outcome?

**Senator Mike Lee**  
**Questions for the Record**  
**Matthew Maddox, Nominee to the United States District Court for the**  
**District of Maryland**

1. How would you describe your judicial philosophy?
2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?
3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?
4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?
5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?
  - a. Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?
6. What are the constitutional requirements for standing?
7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?
8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?
9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?
10. What rights are protected under substantive due process?
11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?
12. What are the limits on Congress’s power under the Commerce Clause?
13. What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?

14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?
15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?
16. What role should empathy play in a judge's consideration of a case?
17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?
18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?
19. How would you explain the difference between judicial review and judicial supremacy?
20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?
21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.
22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?
23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

24. The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition? If not, how would you define equity?
25. Is there a difference between “equity” and “equality?” If so, what is it?
26. Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?
27. How do you define “systemic racism?”
28. How do you define “critical race theory?”
29. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?
30. You worked as an “organizer” for the Service Employees International Union. What were your responsibilities in that role?
31. The main goal of the SEIU is to increase minimum wages to \$15, do you agree that minimum wages should be increased to \$15 across the country?

**SENATOR TED CRUZ**  
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Matthew James Maddox, nominated to be United States District Judge for the District of Maryland**

**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?
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?
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.
4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an "originalist"?
5. Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?
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?
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?
8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?
9. Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?
  - a. Was it correctly decided?
10. Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?
  - a. Was it correctly decided?



11. Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?
  - a. Was it correctly decided?
12. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?
  - a. What are the policy rationales underlying such a presumption?
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?
14. Is it ever permissible for the government to discriminate against religious organizations or religious people?
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.
16. Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom*.
17. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?
18. Explain your understanding the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.
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?
  - a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?

- b. Can courts decide that anything could constitute an acceptable “view” or “interpretation” of religious and/or church doctrine?
  - c. Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?
- 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.
- 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.
- 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.
- 23. Please explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Kennedy v. Bremerton School District*.
- 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*.
- 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?
- 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?
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?
  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?
  29. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?
  30. Is the criminal justice system systemically racist?
  31. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.
  32. In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?
  33. What do you understand to be the original public meaning of 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*?
  35. Do you personally own any firearms? If so, please list them.
  36. Have you ever personally owned any firearms?

37. Have you ever used a firearm? If so, when and under what circumstances?
38. Is the ability to own a firearm a personal civil right?
39. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?
40. Does the right to own a firearm receive less protection than the right to vote under the Constitution?
41. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.
42. Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.
43. Does the President have the authority to abolish the death penalty?
44. Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.
45. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?
46. You previously worked for the Association of Community Organizations for Reform Now (ACORN). What was your position?
47. To your knowledge ACORN ever submit hundreds of thousands of fraudulent voter registration forms?
48. In your time as an organizer, did you ever personally witness, observe, or partake in any attempts to break local, state, or federal law?
49. Were you aware that ACORN's founder, Dale Rathke, was alleged to have embezzled over \$1 million dollars during your time you worked for the organization?
50. Please explain your understanding of the incident regarding Project

Veritas' 2009 undercover expose of ACORN. Please be specific.

51. Why did ACORN ultimately disband?
52. You clerked for Judge Gerald Bruce Lee of the United States District Court for the Eastern District of Virginia in 2011-2012 and Judge Andre Davis of the United States Court of Appeals for the Fourth Circuit in 2014-2015. Both Judges for whom you clerked have publicly advocated against mandatory minimum sentences. Specifically, Judge Davis once stated, "[t]he wholesale use of mandatory minimum sentences has been the source of immeasurable injustice in this country."
  - a. Do you agree with Judge Davis?
  - b. If Judge Davis is incorrect, please explain why.
53. Do you agree there should be uniformity in sentencing?
  - a. Is it unjust for two hypothetical defendants to receive different sentences for the same crime?

**Senator John Kennedy  
Questions for the Record**

**Judge Matthew Maddox**

1. Please describe your judicial philosophy. Be as specific as possible.
2. Do you believe the meaning of the Constitution is immutable or does it evolve over time?
3. Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?
4. Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?
5. What First Amendment restrictions can the owner of a shopping center place on private property?
6. Are non-citizens unlawfully present in the United States entitled to a right of privacy?
7. Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?
8. At what point is a human life entitled to equal protection of the law under the Constitution?
9. A federal district court judge in Washington, DC recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.
  - a. Do you agree?
  - b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?
10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?
11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?
12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.
  - a. How many factors are necessary to provide a special justification for overturning precedent?
  - b. Is one factor alone ever sufficient?
14. Please explain the difference between judicial review and judicial supremacy.
15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?
16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?
17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?
18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?
19. The First, Second, Fourth, Ninth, and Tenth Amendments reference “the people.”
  - a. Who is included within the meaning of ‘*the people*’?
  - b. Is the term’s meaning consistent in each amendment?
20. Does ‘the people’ capture non-citizens or illegal immigrants within the meaning of any amendment?
21. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?
22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?
23. Is the right to terminate a pregnancy among the ‘privileges or immunities’ of citizenship?
24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?
25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

26. How does the Constitution limit the powers of Congress? Please provide examples.
27. Please describe the modern understanding and limits of the Commerce Clause.
28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.
29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.
30. In *Gundy v. United States*, 588 U.S. \_\_\_\_ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?
31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.
32. Please describe your understanding and limits of the anti-commandeering doctrine.
33. Does the meaning of the Eighth Amendment change over time? Why or why not?
34. Is the death penalty constitutional?
35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?
36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.
37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?
38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?
39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?
40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.
41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?



42. Please describe the legal basis that allows federal courts to issue universal injunctions.
43. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.

**Questions from Senator Thom Tillis**  
**for Matthew James Maddox Nominee to be**  
**United States District Judge for the District of**  
**Maryland**

1. Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?
2. What is judicial activism? Do you consider judicial activism appropriate?
3. Do you believe impartiality is an aspiration or an expectation for a judge?
4. Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?
5. Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?

6. Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?
7. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?
8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?
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?
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?
11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

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?
13. Do you believe the current patent eligibility 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?
14. 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?
  - b. Please describe any particular experiences you have had 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?
  - 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?
15. 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 reported that 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?
- 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?
- 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?

16. 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?

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?

17. 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 this practice.

- a. Do you see “judge shopping” and “forum shopping” as a problem in litigation?
  - b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?
  - 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?
  - d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?
18. 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?

19. 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?

**Senator Lindsey Graham, Ranking Member  
Questions for the Record  
Mr. Jerry Edwards, Jr.**

**Nominee to be a United States District Judge for the Western District of Louisiana**

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: Any judgment that I make about the Constitution will be based on the applicable Supreme Court and Fifth Circuit precedent as applied to the facts of the case. Any personal values that I may have would have no role in the constitutional analysis I will conduct in a case. While I am unfamiliar with the context of the quoted statement, I respectfully disagree with it to the extent it is inconsistent with the foregoing.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s stock response was, “They can’t catch ’em all.” Is this an appropriate approach for a federal judge to take?**

Response: The appropriate approach for a federal district judge in every case is to scrupulously follow binding precedent and apply it to the facts of each case. I am committed to following this approach should I be confirmed.

3. **Please define the term “living constitution.”**

Response: “A constitution whose interpretation and application can vary over time according to changing circumstances and changing social values.” Black’s Law Dictionary, (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 am unfamiliar with this statement and its context. However, as the Supreme Court recently observed, “[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2132 (2022). If I am confirmed, I will faithfully apply the analytical framework set forth by the Supreme Court and the Fifth Circuit in each case that raises a constitutional issue.

5. **Under Supreme Court and Fifth 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: I am unaware of Supreme Court or Fifth Circuit precedent directly on this point; however, Black's Law Dictionary defines a fact as "something that actually exists; an aspect of reality." Black's Law Dictionary, (11th ed. 2019). Further, the Supreme Court recently observed that a determination of the proper standard of review of a district, bankruptcy or agency decision on a mixed question of law and fact may turn on whether the question presented requires the court to expound on the law, or immerse the court in factual issues. *Guererro-Lasprilla v. Barr*, 140 S.Ct. 1062, 1069 (2020). If confronted with this issue if I am confirmed, I will closely study and apply Supreme Court and Fifth Circuit precedent.

6. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: All people have the constitutionally protected right of free speech guaranteed by the First Amendment; however, that right is not absolute. *See* 18 U.S.C. § 1507 (regarding picketing or parading); *Virginia v. Black*, 123 S.Ct. 1536, 1547 (2003). (discussing the permissibility of regulating fighting words, true threats and words that incite "imminent lawless action.") *Id.* If I am confronted with this issue in a case before me, I will study the law to determine the applicable precedent and apply it to the facts of the case.

7. **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 I am confirmed, I will apply the sentencing factors set forth in 18 U.S.C. 3553(a). These factors require the Court to weigh multiple factors all of which are designed to guide the Court to impose the appropriate sentence for each case while ensuring that it is sufficient but not greater than necessary. 18 U.S.C. 3553(a) does not provide that any one factor is more important than another.

8. **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 district court judge, my judicial philosophy will be to approach every case with an open mind and to render decisions that reflect a thorough understanding of the law and facts and clearly articulate the basis for each ruling. I am unaware of a particular Supreme Court decision that reflects this approach.

9. **Please identify a Fifth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: As a district court judge, my judicial philosophy will be to approach every case with an open mind and to render decisions that reflect a thorough understanding of the law and facts and clearly articulate the basis for each ruling. I am unaware of a particular Fifth Circuit opinion that reflects this approach.

**10. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: This statute prohibits a person from picketing, parading, demonstrating or using a sound-truck or similar device, with the intent to interfere with, obstruct or impede, the administration of justice or to influence a judge, juror, witness or court officer in performing their duties.

**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 has held that 18 U.S.C. § 1507 is constitutional on its face. However, the Supreme Court has held that a statute in Louisiana modeled on 18 U.S.C. § 1507 was constitutionally valid on its face. *Cox v. State of Louisiana*, 85 S.Ct. 476, 481 (1965).

**12. What is the operative standard for determining whether a statement is not protected speech under the “fighting words” doctrine?**

Response: The Supreme Court has held that fighting words are “those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.” *Virginia v. Black*, 123 S.Ct. 1536, 1547 (2003); *see also* Michael Mannheimer, *The Fighting Words Doctrine*, 93 Colum.L.Rev. 1527, 1528 (1993), citing *Cohen v. California*, 91 S.Ct. 1780, 1785 (1971).

**13. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: “‘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.” *Virginia v. Black*, 123 S.Ct. 1536, 1548 (2003). Several factors should be considered to determine whether a statement is protected speech: 1) whether the statement is political hyperbole; 2) the overall context in which the statement is made; 3) the reaction of the listeners; and 4) whether the statement was conditional, especially if it was conditioned on an event that was unlikely to occur. Jennifer Rothman, *Freedom of Speech and True Threats*, 25 Harv. J.L. & Pub. Pol’y 283, 295 (2001); *see also* *Watts v. United States*, 89 S.Ct. 1399 (1969).

14. 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 *Griswold v. Connecticut* correctly decided?
- d. Was *Roe v. Wade* correctly decided?
- e. Was *Planned Parenthood v. Casey* correctly decided?
- f. Was *Gonzales v. Carhart* correctly decided?
- g. Was *District of Columbia v. Heller* correctly decided?
- h. Was *McDonald v. City of Chicago* correctly decided?
- i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
- j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
- k. Was *Dobbs v. Jackson Women's Health* correctly decided?

Response: This is a combined response to subparts (a) through (k). Some Supreme Court precedent remains the subject of active litigation. This reality makes it inappropriate for me to comment on the merits of such precedent in light of Canon 3(A)(6) of the Code of Conduct for United States Judges which provides that it is improper to comment on the merits of any case that is pending or impending in any court. Further, any comments could be construed as a prejudgment of the issues implicated by such precedent, which would not comport with the Judicial Code of Conduct. If I am confirmed, I will follow all Supreme Court and Fifth Circuit precedent in each case listed above, except for *Roe v. Wade* and *Planned Parenthood v. Casey*, which were overturned by *Dobbs v. Jackson Women's Health*.

Notwithstanding the foregoing, *Brown* and *Loving* represent Supreme Court precedent that is not likely to be challenged in subsequent litigation. This precedent does not implicate Canon 3(A)(6) and therefore I believe it permissible for me to say that these cases were correctly decided.

15. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?

Response: I would apply the standard recently articulated by the United States Supreme Court: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2129-2130 (2022).

16. 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.

17. 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.

18. **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.

19. **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.

20. **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.

21. **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 1, 2023, I was contacted by Senator Bill Cassidy’s office inquiring if I would be interested in serving as a federal district judge, and I responded that I would. On March 2, 2023, I was contacted by Senator John Kennedy’s office and I expressed my interest in serving as a federal district judge. On or around March 6, 2023, I was contacted by Senator Cassidy’s office informing me that the White House Counsel’s Office would contact me to schedule an interview. I was interviewed by attorneys from the White House Counsel’s Office on March 8, 2023. I interviewed with Senators Cassidy and Kennedy on March 15, 2023. On March 17, 2023, I was contacted by the White House Counsel’s Office and the Office of Legal Policy at the Department of Justice regarding the vetting process. Since that time, I have been in contact with officials from the Office of Legal Policy. On June 7, 2023, the President announced his intent to nominate me.



22. **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.

23. **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.

24. **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.

25. **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.

26. **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.

27. **Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?**

- a. **If yes,**
  - i. **Who?**
  - ii. **What advice did they give?**
  - iii. **Did they suggest that you omit any cases?**

Response: No.

28. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: On March 1, 2023, I was contacted by Senator Bill Cassidy's office inquiring if I would be interested in serving as a federal district judge, and I responded that I would. On March 2, 2023, I was contacted by Senator John Kennedy's office and I expressed my interest in serving as a federal district judge. On or around March 6, 2023, I was contacted by Senator Cassidy's office informing me that the White House Counsel's Office would contact me to schedule an interview. I was interviewed by attorneys from the White House Counsel's Office on March 8, 2023. I interviewed with Senators Cassidy and Kennedy on March 15, 2023. On March 17, 2023, I was contacted by the White House Counsel's Office and the Office of Legal Policy at the Department of Justice regarding the vetting process. Since that time, I have been in contact with officials from the Office of Legal Policy. On June 7, 2023, the President announced his intent to nominate me.

**29. Please explain, with particularity, the process whereby you answered these questions.**

Response: I drafted responses to each question as I went through them using the notes I created in preparation for the hearing before the Senate Judiciary Committee, which included notes on questions asked in prior hearings and notes from cases I reviewed in preparation for the hearing. I researched Westlaw if an answer could not be extrapolated from my notes. I received limited feedback from the Office of Legal Policy with the Department of Justice and then finalized my answers.

Senate Judiciary Committee  
Nominations Hearing  
July 12, 2023  
Questions for the Record  
Senator Amy Klobuchar

**For Jerry Edwards Jr., nominee to be United States District Court Judge for the Western District of Louisiana**

Since 2019, you have served in the U.S. Attorney's Office of the Western District of Louisiana and served as Chief of the Civil Division for two years. During your tenure as an Assistant U.S. Attorney you supervised lawyers in the Appellate, Criminal, and Civil divisions, and tried nine cases to verdict.

- **How will these experiences inform your approach if you are confirmed as a federal district court judge?**

Response: My various roles in the U.S. Attorney's Office have given me a broad base of knowledge that will assist me in deciding civil and criminal matters fairly and efficiently. I was primarily a civil litigator when I joined the U.S. Attorney's Office but serving as Chief of the Civil Division gave me great insight into the myriad of civil matters that involve the federal government. I have also gained substantial knowledge in criminal law and procedure during my time in the U.S. Attorney's Office through my role as the First Assistant U.S. Attorney. As the First Assistant, I supervise the Criminal and Appellate Divisions of our office and have been involved with the entire criminal process from investigation, indictment, discovery, pre-trial motions, trial strategy, sentencing and appeals. The knowledge I have gained in the U.S. Attorney's Office has given me an awareness for potential pre-trial, trial and appellate issues.

**Senator Mike Lee**  
**Questions for the Record**  
**Jerry Edwards Jr., Nominee to the United States District Court for the Western District of Louisiana**

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

Response: I am committed to approaching each case with an open mind. I will thoroughly study the law and facts of each case and clearly articulate the basis for each ruling.

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

Response: I would first determine whether there is binding precedent from the Supreme Court and Fifth Circuit Court of Appeals on the interpretation of the statute and if so, apply that interpretation to the facts of the case. If there were no binding precedent and the statutory text was unambiguous, I would apply its plain meaning. If the text was ambiguous, I would apply the applicable canons of statutory construction to determine its meaning. In the absence of binding precedent, I would also review cases from other courts that have interpreted the statute for persuasive authority.

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

Response: I would first determine if there is binding Supreme Court and Fifth Circuit precedent on the constitutional provision and apply the precedent to the facts of the case. In the absence of binding precedent, I would apply the framework of scrutiny on the constitutional provision as set forth by the Supreme Court and Fifth Circuit in similar cases.

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

Response: As recently set forth by the United States Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022) the text and original meaning of a constitutional provision are important to determining the meaning of the constitutional provision as applied to the facts of a current case. “Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *Id.* at 2132.

**5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: I first read the statute and if its meaning is clear and unambiguous, apply it to the facts of the case. If the meaning of the statute is unclear, I would approach the statute in the manner set forth in my answer to Question #2.

**a. Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: The Supreme Court has approached the determination of the plain meaning by ascertaining the public understanding of the relevant language at the time it was enacted. See *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022).

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

Response: A plaintiff must show that they have an injury that is traceable to the conduct of the defendant and redressable by the court to satisfy the constitutional requirements for standing.

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

Response: The Supreme Court has held that Congress has implied powers that are necessary and proper to executing its powers that are expressly enumerated in the Constitution. See, *M’Culloch v. Maryland*, 17 U.S. 316 (1819).

**8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: The Supreme Court has observed that “[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.” *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566, 2598 (2012). If confronted with such a law, I would approach the constitutional question by employing the level of scrutiny and analysis set forth by the Supreme Court and the Fifth Circuit on the issue presented by the law.

**9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Supreme Court has held that the Constitution protects certain rights that are not expressly enumerated in the Constitution when those rights are deeply rooted in the Nation’s “history and tradition” and “implicit in the concept of ordered liberty.” See *Washington v. Glucksberg*, 117 S.Ct. 2258, 2268 (1997). For example, the Supreme Court has recognized the right to marry (*Loving v. Virginia*, 87 S.Ct. 1817 (1967)), the right to direct the education of your children (*Meyer v. Nebraska*,

43 S.Ct. 625 (1923)) and the right to privacy (*Griswold v. Connecticut*, 85 S.Ct. 1678 (1965)).

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

Response: The Supreme Court has recognized several rights that are protected under substantive due process including those set forth in my answer to Question 9 and others that the Supreme Court has determined are fundamental based on the standard articulated in *Glucksberg*.

**11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?**

Response: The Supreme Court has rejected the due process analysis of *Lochner v. New York*. See *Ferguson v. Skrupa*, 83 S.Ct. 1028, 1030-1031 (1963). The test to determine whether rights are protected by the substantive due process clause is whether the asserted rights satisfy the *Glucksberg* test. As a district court judge, I will apply the *Glucksberg* analysis to determine whether the asserted personal or economic rights are protected by substantive due process, if there is no binding precedent on the issue.

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

Response: The Commerce Clause provides Congress with the power to enact laws to regulate foreign commerce, interstate commerce and commerce with Indian Tribes. Perhaps most litigated is Congress' power to regulate interstate commerce. The Supreme Court has held that Congress may regulate: 1) the channels of interstate commerce; 2) the instrumentalities of interstate commerce; and 3) the activities that substantially affect interstate commerce. See *United States v. Lopez*, 115 S.Ct. 1624, 1629 (1995).

**13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?**

Response: The Supreme Court has determined that suspect classes include religion, race, alienage and nationality. See *City of New Orleans v. Dukes*, 96 S.Ct. 2513, 2517 (1976); see also *Graham v. Richardson*, 91 S.Ct. 1848, 1852 (1971). Laws affecting groups based on these classifications must survive strict scrutiny. *Graham*, 91 S.Ct. at 1852.

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

Response: The role of checks and balances and the separation of powers is critical to the understanding how each branch of the federal government works together and

with the state governments. The Constitution sets forth the powers of each branch of the federal government separately, which confirms the independence of each branch, and the Constitution is explicit in the states' reservation of powers.

- 15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?**

Response: I would have to evaluate the case utilizing the applicable Supreme Court framework for determining whether the exercised authority is constitutional. *See e.g. Youngstown Sheet & Tube Co. v. Sawyer*, 72 S.Ct. 863 (1952) (holding that the President did not have the constitutional power to seize steel plants); *see also Marbury v. Madison*, 5 U.S. 137, 178 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.")

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

Response: The judge's considerations in reaching a conclusion in a case should be based on the evidence and application of the law to the facts.

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

Response: Both outcomes are undesirable.

- 18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?**

Response: I have not studied this issue to determine the frequency of and bases for the invalidation of federal statutes from 1789 to the present.

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

Response: Black's Law Dictionary defines judicial review as "[a] court's power to review the actions of other branches or levels of government" and judicial supremacy as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019). *See Marbury v. Madison*, 5 U.S. 137, 178 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.")

20. **Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that “If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.” How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?**

Response: Elected officials should respect duly rendered judicial decisions and follow them. *See* Article VI, Clause 3 of the U.S. Constitution; *see also Cooper v. Aaron*, 78 S.Ct. 1401 (1958).

21. **In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that’s important to keep in mind when judging.**

Response: If I am confirmed, it will be important for me as a district court judge to remember that my role is not to make law, or impose my personal view of what the law should be on litigants; instead, my role is limited to applying the law in view of the facts of a particular case.

22. **As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: As a district court judge, my duty will be to apply legal precedent to the facts of the case before me. It would not be appropriate for the district court to go beyond applicable precedent to conduct its own constitutional analysis to decide a case. If the precedent does not speak directly the issue at hand, I would utilize the constitutional framework employed by the Supreme Court and Fifth Circuit in the most similar case.

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

Response: The Court’s sentencing analysis should be limited to the factors set forth in 18 U.S.C. 3553(a). These factors do not include a defendant’s group identity as set forth in the question above.



24. **The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition? If not, how would you define equity?**

Response: I have not studied the meaning of “equity” in this context. However, the first two definitions of equity contained in Black’s Law Dictionary are: 1) “fairness; impartiality; evenhanded dealing;” and 2) “[t]he body of principles constituting what is fair and right; natural law.” Black’s Law Dictionary (11th ed. 2019).

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

Response: See my answer to Question 24. Black’s Law Dictionary defines equality as “[t]he quality, state, or condition of being equal; esp. likeness in power or political status.” Black’s Law Dictionary (11th ed. 2019).

26. **Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?**

Response: I am unaware of Supreme Court or Fifth Circuit precedent addressing equity in this context. It would not be appropriate under the Code of Conduct for United States Judges for me to offer an opinion on whether the scope of the 14<sup>th</sup> Amendment’s equal protection clause guarantees “equity” as set forth in Question 24. Specifically, any opinion offered by me could potentially violate Canon 1, which requires judges to uphold the integrity and independence of the judiciary. Any opinion in the abstract could be construed as pre-judging issues related to this definition that could come before me as a district judge.

27. **How do you define “systemic racism?”**

Response: Merriam-Webster defines systemic racism as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems).” Merriam-Webster’s Dictionary (2022).

28. **How do you define “critical race theory?”**

Response: Black’s Law Dictionary defines critical race theory as “[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities.” Black’s Law Dictionary (11th ed. 2019).

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

Response: See my answers to Questions 27 and 28.

30. **For three years, you were listed as the counsel of record in *Smith et al. v. Concordia Parish*, a desegregation case against a local charter school. In multiple filings in this case you argued that blatant racial balancing (i.e. giving lottery preferences based on race or reserving seats for individuals based on their race) is constitutional. Can you explain in more detail the reasoning behind this argument?**

Response: From September 2020 to February 2023, I served as co-counsel for the United States of America in *Smith, et al. v. Concordia Parish School Board, et al.*, Docket No. 65-cv-11577 in the Western District of Louisiana.

The Concordia Parish School District has been operating under a desegregation order since 1970. Delta Charter Group, Inc. (a local charter school) intervened in this litigation in September 2012 and entered into a Consent Decree with the other parties in January 2013. One of the agreements between the parties, as reflected in the 2013 Consent Decree, was for the student enrollment at Delta Charter Group, Inc. to reflect the racial demographics of the Concordia Parish School District.

As an employee of the Department of Justice, I am prohibited by Section 1-7 of the Justice Manual from commenting on the parties’ arguments as this case is still pending and is currently on appeal to the Fifth Circuit. Further, it would not be appropriate for me to comment in light of Canon 3(A)(6) of the Code of Conduct for United States Judges, which prohibits comments on the merits of pending cases.

31. **Would the Supreme Court’s recent decision in the *Students for Fair Admission* case have changed the way you handled the *Smith* case as Assistant US attorney?**

Response: See my answer to Question 30. Further, the effect of the *Students for Fair Admission* case on the *Smith* case is one of the questions before the Fifth Circuit in the pending appeal.

32. **In another school desegregation case, *Thomas v. St. Martin Parish School Board*, you recommended closing a historically white school as a “practical measure” to “immediately eliminate it as a vestige of the prior de jure system.” The district court ruled against this recommendation and called it “harsh” and “extreme.” Why did you feel that closing the school was an appropriate recommendation?**

Response: From August 2020 to January 2023, I served as co-counsel for the United States of America in *Thomas, et al. v. St. Martin Parish School Board*, Docket No. 65-cv-11314 in the Western District of Louisiana.

As an employee of the Department of Justice, I am prohibited by Section 1-7 of the Justice Manual from commenting on the parties' arguments as this case is still pending. Further, it would not be appropriate for me to comment in light of Canon 3(A)(6) of the Code of Conduct for United States Judges, which prohibits comments on the merits of pending cases.

**SENATOR TED CRUZ**  
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Jerry Edwards Jr., nominated to be United States District Judge for the Western District of Louisiana**

**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: The Supreme Court has held that discrimination based on race must survive strict scrutiny; that is to say, the challenged activity must be narrowly tailored to advance a compelling interest. “[A]ll racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors, Inc. v. Peña*, 115 S.Ct. 2097, 2113 (1995). Further there are federal laws that prohibit racial discrimination such as the Civil Rights Act and the Fair Housing Act.

### 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: Whether there are any unenumerated rights protected by the Constitution that have not yet been articulated could be litigated before me should I be confirmed to be a district judge. Accordingly, it would be inappropriate under Canon 1 of the Code of Conduct for United States Judges, which requires judges to uphold the integrity and independence of the judiciary, to prejudge the issue of whether such rights exist. As a district judge, I will employ the Supreme Court’s test for whether the Constitution protects any such asserted unenumerated rights. Specifically, whether the asserted rights are deeply rooted in the nation’s history and tradition and implicit in the concept of ordered liberty. See *Glucksberg v. Washington*, 117 S.Ct. 2258 (1997).

### 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: I have not studied the judicial philosophies of the justices listed above. However, my philosophy will be similar to those justices who approach every case with an open mind, who thoroughly study the law and facts of each case and clearly articulate the basis for each ruling.

### 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; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect.” Black’s Law Dictionary (11th ed. 2019). I do not use any labels to characterize my approach to interpreting the law; however, I will approach

every case using the analytical framework set forth in the applicable binding precedent. If there is no precedent, I will apply the relevant rules of construction to determine the meaning of the disputed provision.

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a ‘living constitutionalist’?**

Response: “A constitution whose interpretation and application can vary over time according to changing circumstances and changing social values.” Black’s Law Dictionary, (11th ed. 2019). I do not use any labels to characterize my approach to interpreting the law; however, I will approach every case using the analytical framework set forth in the applicable binding precedent. If there is no precedent, I will apply the relevant rules of construction to determine the meaning of the disputed provision.

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: As a district court judge dealing with an issue of first impression, I would be required to utilize the analytical framework set forth by the Supreme Court and Fifth Circuit that pertains to the constitutional question presented. For example, I would analyze an issue of first impression pertaining to the Second Amendment under the *Bruen* test recently articulated by the Supreme Court: “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2129-2130 (2022).

7. **Is the public’s current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: The Supreme Court recently observed that the determination of the public understanding of a constitutional provision or statute at the time it was enacted is essential to determine its meaning. *See District of Columbia v. Heller*, 128 S.Ct. 2783 (2008); *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2132 (2022) (the meaning of the Constitution “is fixed according to the understandings of those who ratified it”); *Bostock v. Clayton County*, 140 S.Ct. 1731, 1738 (2020) (“This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.”)

8. **Do you believe the meaning of the Constitution changes over time absent changes**

**through the Article V amendment process?**

Response: As recently set forth by the United States Supreme Court, the meaning of the Constitution “is fixed according to the understandings of those who ratified it.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2132 (2022). If I am confirmed to be a district court judge, I am committed to applying the meaning of constitutional provisions as determined by Supreme Court and Fifth Circuit precedent.

**9. Is the Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization* settled law?**

Response: Yes. The Supreme Court’s *Dobbs* decision is binding precedent.

**a. Was it correctly decided?**

Response: As a judicial nominee, it would not be appropriate for me to comment on the merits of the decision in light of Canon 1 and Canon 3 of the Code of Conduct for United States Judges.

**10. Is the Supreme Court’s ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: Yes. The Supreme Court’s *Bruen* decision is binding precedent.

**a. Was it correctly decided?**

Response: As a judicial nominee, it would not be appropriate for me to comment on the merits of the decision in light of Canon 1 and Canon 3 of the Code of Conduct for United States Judges.

**11. Is the Supreme Court’s ruling in *Brown v. Board of Education* settled law?**

Response: Yes. The Supreme Court’s *Brown* decision is binding precedent.

**a. Was it correctly decided?**

Response: Given that it is very unlikely that *Brown*’s holding will be challenged, Canon 1 and Canon 3 of the Code of Conduct for United States Judges are not implicated. Accordingly, it is permissible to comment that yes, *Brown* was correctly decided.

**12. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: A crime of violence, an offense for which the maximum punishment is life imprisonment or death, a drug offense that has a maximum punishment of ten or more

years, a felony offense involving a minor victim or a dangerous weapon. 18 U.S.C. § 3142.

**a. What are the policy rationales underlying such a presumption?**

Response: The offenses involve circumstances in which a defendant is charged with a violent crime and thus could pose a danger to public safety if released. The offenses also address situations where a defendant is charged with a serious drug offense and would likely have interstate or foreign connections that can assist the defendant in absconding and avoiding a significant period of confinement. 9B Federal Procedure, L. Ed. § 22:1893 (August 2023 Update).

**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, there are limits; however, the scope of those limits will depend on the nature of the challenged activity and the nature of the private institution involved. *See* the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*; *see also Tandon v. Newsom*, 141 S.Ct. 1294, 1296 (2021) (government regulations must satisfy strict scrutiny whenever they treat comparable secular activity more favorably than religious exercise); *303 Creative, LLC v. Elenis*, 143 S.Ct. 2298 (“government may not compel a person to speak its own preferred messages.”) If I am confirmed to be a district judge, I will carefully study any case that should come before me involving these issues and will apply the Supreme Court and Fifth Circuit precedent to the facts.

**14. Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: The Supreme Court has held that discrimination against religious organizations or religious people must survive strict scrutiny; that is to say, the challenged activity must be narrowly tailored to advance a compelling interest. *See* the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*; *Tandon v. Newsom*, 141 S.Ct. 1294, 1296 (2021) (government regulations must satisfy strict scrutiny whenever they treat comparable secular activity more favorably than religious exercise); *see also Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014).

**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 ruled in favor of the applicants by weighing the factors that govern injunctive relief: 1) the applicants were likely to succeed on merits because the government could not show that restrictions were narrowly tailored to advance the government's interest in preventing the spread of COVID-19; 2) the applicants were irreparably harmed because the restrictions infringed on their First Amendment freedoms; and 3) the government had not shown how granting the injunction would harm the public.

16. **Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom*.**

Response: The Supreme Court determined that California's COVID restrictions were not neutral and generally applicable because it treated secular activity more favorably than comparable religious activity. Accordingly, the Supreme Court held that the government action must satisfy strict scrutiny.

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

Response: Yes; the Supreme Court has held that the Free Exercise Clause of the Constitution protects religious exercise in activities of daily life. See *Kennedy v. Bremerton School District*, 142 S.Ct. 2407, 2421 (2022).

18. **Explain your understanding the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.**

Response: The Supreme Court held that the Colorado Civil Rights Commission violated the Free Exercise Clause of the Constitution because the Commission's actions reflected hostility toward religion and the Free Exercise Clause bars even "subtle departures from neutrality."

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: Supreme Court precedent requires a plaintiff to establish that the burdened religious practice is sincere to be afforded protection under the Free Exercise Clause. See *Kennedy v. Bremerton School District*, 142 S.Ct. 2407 (2022); see also *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014).

- a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Supreme Court precedent requires a plaintiff to establish that the burdened religious practice is sincere to be afforded protection under the Free Exercise Clause. *Kennedy v. Bremerton School District*, 142 S.Ct. 2407 (2022). If confirmed and confronted with such a case, I will apply the appropriate framework

of analysis in accordance with Supreme Court and Fifth Circuit precedent to determine if the religious practice at issue falls within the scope of First Amendment protection.

- b. **Can courts decide that anything could constitute an acceptable “view” or “interpretation” of religious and/or church doctrine?**

Response: See my answer to part (a).

- c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: I have not researched the official position of the Catholic Church on this issue. It would be inappropriate to offer an opinion on the Catholic Church’s position under the Canon 3 of Code of Conduct for United States Judges, which requires judges to perform their duties impartially, as the Catholic Church may be party to litigation on this issue and any opinion on its position could imply that I have prejudged the matter.

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 Court held that the ministerial exception, which does not permit government intervention in employment disputes in religious organizations, covers employees of religious organizations who are responsible for educating and forming students in the faith. The Court reasoned that judicial review of the way religious schools supervise its teachers would undermine the independence of the religious institution.

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 Court determined that Philadelphia’s decision to not enter into a full foster care contract with Catholic Social Services (CSS) because of the city’s non-discrimination requirement imposed a burden on CSS’s religious exercise that was subject to strict scrutiny because the city’s requirement was discretionary. In this context, the Supreme Court held that the courts must scrutinize the government’s compelling interest against the asserted harm to that interest of not granting an exemption to a particular religious group. The Court held that Philadelphia’s interests could not justify denying CSS an exception to the city’s non-discrimination

requirement.

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 concluded that Maine's tuition assistance program violated the Free Exercise Clause of the Constitution by not allowing parents to use the assistance at religious schools. The Court rejected the state's Establishment Clause argument because the assistance would flow to religious organizations through a parent's private choice.

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 the Free Exercise and Free Speech Clauses of the Constitution protected the plaintiff's right to say a private prayer on the football field after a game. As for the Free Exercise analysis, the Court determined that the plaintiff's prayer was his sincerely held religious practice, that the government's prohibition of this practice was not neutral and that the government prohibition could not satisfy strict scrutiny. As for the Free Speech Clause, the Court determined that the plaintiff's prayer was private speech which could not be prohibited by the government which contended, without evidentiary support, that it was protecting its obligation under the Establishment Clause.

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 concurrence in *Mast* provided further guidance to the lower courts on his view of the proper strict scrutiny analysis required under the Religious Land Use and Institutionalized Persons Act. Specifically, the government's compelling interest must be more than general, and it must be examined by application of the government's action to this particular Amish community. The court's analysis should consider the harm to the government's interest in granting an exception to this particular religious group.

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: The interpretation of 18 U.S.C. §1507 may come before me should I be confirmed; therefore, the Code of Conduct for United States Judges provides that it

would be inappropriate for me to offer an opinion as to how broadly the statute should be interpreted. Any opinion I may offer could be interpreted as prejudging the issue. I can commit that if confirmed, I will follow Supreme Court and Fifth Circuit precedent; any views I may have would play no part in how I would approach this issue should it come before me as a judge.

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: Yes.

28. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, including giving a “plus” factor to certain applicants based on their race, should you be confirmed?**

Response: Yes, I commit that I will not engage in racial discrimination.

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

Response: Political appointments are governed by Article II, Section 2, Clause 2 of the U.S. Constitution. I will follow Supreme Court and Fifth Circuit precedent should this issue come before me as a judge.

30. **Is the criminal justice system systemically racist?**

Response: My experience with the criminal justice system is limited to the Western District of Louisiana, where I currently serve as First Assistant United States Attorney. The Western District of Louisiana's prosecutors, public defenders and Judges all strive to uphold the constitutional rights of all citizens without regard to their race.

31. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: I believe this issue should be left to Congress. It would be inappropriate to offer an opinion on this issue as it implicates Canon 1 of the Code of Conduct for United States Judges, which requires judges to uphold the integrity and independence of the judiciary.

32. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: The Justices of the U.S. Supreme Court are all legitimately appointed members of the Court.

33. **What do you understand to be the original public meaning of the Second Amendment?**

Response: The Supreme Court in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008) articulated that the original public meaning of the Second Amendment contemplated the personal right to bear arms for lawful purposes particularly self-defense in 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: This line of cases holds that any restriction on the right to bear arms that does not comport with our nation's historical tradition is prohibited.

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

Response: The Supreme Court held in *District of Columbia v. Heller* that the right to own a firearm is an individual 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: The United States Supreme Court recently articulated that the right to bear

arms “is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2156 (2022).

37. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: See my answer to Question 36.

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

Response: Article II, Section 3 of the U.S. Constitution requires the President to “take Care that the Laws be faithfully executed.” Further, the Supreme Court has recognized that an agency’s decision not to enforce a law is within the agency’s discretion. *Heckler v. Chaney*, 105 S.Ct. 1649, 1655 (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 (11th ed. 2019). A substantive administrative rule change would need to comply with the provisions of the Administrative Procedure Act.

40. **Does the President have the authority to abolish the death penalty?**

Response: No. The death penalty is set forth in 18 U.S.C. § 3591.

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 vacated the stay of the district court’s judgment in favor of the plaintiffs holding that the CDC lacked the statutory authority to impose an eviction moratorium. The Court held that the stay was not warranted under the four-factor test governing stays: 1) the plaintiffs were likely to succeed on the merits because there was no clear authorization from Congress for the CDC’s authority to impose the moratorium; 2) the moratorium put the plaintiffs at risk of irreparable injury by depriving them of rent payments with no guarantee of recovery; 3) the interest to the government in maintaining the stay had decreased; and 4) Congress did not extend the moratorium and it was up to Congress, not the CDC, to decide whether the public interest merited an extension.

42. **Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to**

**that person's conduct?**

Response: I am unaware of such conduct ever occurring in the Western District of Louisiana and any such conduct would be inappropriate in our office.

43. **You have been involved in litigation against Louisiana charter schools involving race-based admissions? Did the charter school that you sued segregate students based on race?**

Response: From September 2020 to February 2023, I served as co-counsel for the United States of America in *Smith, et al. v. Concordia Parish School Board, et al.*, Docket No. 65-cv-11577 in the Western District of Louisiana. A school desegregation case.

The Concordia Parish School District has been operating under a desegregation order since 1970. Delta Charter Group, Inc. (a local charter school) intervened in this litigation in September 2012 and entered into a Consent Decree with the other parties in January 2013. One of the agreements between the parties, as reflected in the 2013 Consent Decree, was for the student enrollment at Delta Charter Group, Inc. to reflect the racial demographics of the Concordia Parish School District.

As an employee of the Department of Justice, I am prohibited by Section 1-7 of the Justice Manual from commenting on whether the charter school segregated students based on race as this matter is still pending. Further, it would not be appropriate for me to comment in light of Canon 3(A)(6) of the Code of Conduct for United States Judges, which prohibits comments on the merits of pending cases.

44. **Do you agree with Justices Clarence Thomas and John Marshall Harlan that our Constitution is colorblind?**

Response: I am unable to agree with this statement as I have not researched Justices Thomas's and Harlan's statements on this issue to understand their meaning. However, the Supreme Court has determined that race is a protected class and any racial classifications must satisfy the highest level of scrutiny, strict scrutiny, to be constitutional. If I am confirmed, I will scrupulously follow this precedent and apply it to the facts of each particular case.

45. **Why should the government eschew individual merit in favor of skin color?**

Response: The Supreme Court has held that any governmental action based on racial classifications must be accomplished by the least restrictive means tailored to satisfy a compelling interest. Put simply, any racial classification must satisfy strict scrutiny.

46. **What was the holding of Justice Powell's plurality opinion in *Bakke v. Regents of the University of California*?**

Response: The holding of the plurality opinion in *Bakke* is that racial quotas are impermissible.

47. **In 2021, you defended the Biden administration’s Covid-19 vaccine mandate for federal contractors. In your opposition brief, you argued that the President, in his capacity as “CEO of the Executive Branch as a market participant,” had the “unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases.”**

- a. **Under your argument, does the President have any limiting principle under the Procurement Act?**

Response: As an Assistant United States Attorney, I served as co-counsel for the federal government in defending the Covid-19 vaccine mandate for federal contractors. As a district court nominee, it would be inappropriate for me to offer an opinion on hypothetical limits to the President’s authority under the Procurement Act as such an opinion could be interpreted as prejudging future potential litigation involving the Act.

- b. **It would seem that you argued that the President has unrestricted power to use procurement regulations to reach through an employing contractor to force a vaccine mandate on *individual employees*. Is that correct? If not, explain.**

Response: The federal government’s position in this case was that the President’s authority under the Procurement Act was limited by the language of the Act which requires a sufficiently close nexus between the executive order and the values of economy and efficiency in federal procurement and contracting.



**Senator John Kennedy  
Questions for the Record**

**Mr. Jerry Edwards**

**1. Please describe your judicial philosophy. Be as specific as possible.**

Response: My judicial philosophy will be to: 1) approach every case with an open mind; 2) thoroughly study the law and facts of each case; and 3) clearly articulate the basis for each ruling in the record.

**2. Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

Response: The Supreme Court recently observed that constitutional provisions are “intended to endure for ages to come and consequently, to be adapted to the various crises of human affairs. Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2132 (2022) (citations omitted). I believe that it is the role of a district court judge to apply the meaning of the Constitution as dictated by Supreme Court and Circuit Court precedent.

**3. Please describe how you would determine the meaning of an ambiguous term or phrase in a statute or legal document.**

Response: I would first look for applicable Supreme Court and Fifth Circuit precedent on the ambiguous term or phrase and apply it accordingly. If there were no binding precedent, I would apply the applicable rules of construction to the term or phrase to determine its meaning. I would also look for persuasive authority from other courts that have interpreted the subject term or phrase. Secondary sources such as treatises or law review articles may be useful in combination with the tools of statutory construction, if there is no binding precedent.

**4. Should a judge look beyond a law’s text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

Response: No. One of the basic tenets of construction is that when the meaning of a law is clear, no further inquiry is necessary. The law should be applied as written.

**5. Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

Response: Legislative history should be the last tool utilized to interpret the meaning of a statute and should be used in conjunction with other tools of statutory construction. The Supreme Court has stated that “the authoritative source for finding the Legislature’s intent lies in the Committee Reports on the bill, which ‘represent the considered and

collective understanding of those Congressmen involved in drafting and studying the proposed legislation.” *Garcia v. United States*, 105 S.Ct. 479, 483 (1984). However, the Supreme Court has cautioned that “legislative history is itself often murky, ambiguous, and contradictory.” *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 125 S.Ct. 2611, 2626 (2005).

- 6. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?**

Response: No.

- 7. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?**

Response: In *Crawford v. Marion County Election Bd.*, 128 S.Ct. 1610 (2008), the Supreme Court upheld Indiana’s law requiring citizens voting in person to present identification. If I am confirmed and confronted with this issue, I will follow the applicable Supreme Court and Fifth Circuit precedent and apply it to the facts of each case.

- 8. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual’s rights under the Second Amendment in light of the Supreme Court’s opinion in *Bruen*.**

Response: I would apply the standard recently articulated by the United States Supreme Court: “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2129-2130 (2022).

- 9. How does the judicial branch decide when an agency has exercised more authority than Congress delegated or otherwise exceeded its rulemaking powers?**

Response: The court should employ a two-part test when reviewing an agency’s construction of a statute. First, the court must determine “whether Congress has directly spoken to the precise question at issue.” *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 104 S.Ct. 2778, 2782 (1984). If the intent of Congress is clear, the court and the agency must give effect to the unambiguously expressed intent of Congress. *Id.* However, if Congress has not directly addressed the issue, the question for the court is whether the agency’s interpretation of the statute is reasonable. *Id.*

In *Biden v. Nebraska*, 143 S.Ct. 2355 (2023), the Supreme Court recently articulated that courts should examine the history and breadth of the authority the agency has asserted

and the economic and political significance of the assertion, to determine whether the exercised agency authority is appropriate. *See also West Virginia v. Environmental Protection Agency*, 142 S.Ct. 2587 (2022).

**10. In *Gundy v. United States*, 588 U.S. \_\_\_\_ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?**

Response: The Supreme Court has recognized that “[t]he Constitution . . . makes few explicit references to federal criminal law, but the Necessary and Proper Clause nonetheless authorizes Congress, in the implementation of other explicit powers, to create federal crimes . . . .” *United States v. Kebodeaux*, 133 S.Ct. 2496, 2503 (2013). In *Kebodeaux*, Congress delegated to the Executive Branch the authority to designate certain offenses as sexual offenses for the purposes of the registration requirements in the Sex Offender Registration and Notification Act (SORNA); however, I am unaware of any Supreme Court or Fifth Circuit precedent on the issue of the delegation of authority to define a criminal offense.

This is an issue that may appear before me and therefore any comments could be construed as a prejudgment of the issue, which would not comport with Canon 3 of the Code of Conduct for United States Judges. If I am confronted with this issue as a district judge, I will study the law closely and apply it to the facts of the case to determine if such delegation is constitutional.

**11. Does the meaning of the Eighth Amendment change over time? Why or why not?**

Response: The Supreme Court has observed that “the Eighth Amendment’s protection against excessive or cruel and unusual punishments flows from the basic ‘precept of justice that punishment for a crime should be graduated and proportioned to the offense. Whether this requirement has been fulfilled is determined not by the standards that prevailed when the Eighth Amendment was adopted in 1791 but by the norms that ‘currently prevail.’” *Kennedy v. Louisiana*, 128 S.Ct. 2641, 2649 (2008) (citations omitted). The Supreme Court further observed: “[t]his is because the standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.” *Id.*; *see also New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2132 (2022) (constitutional provisions are “intended to endure for ages to come and consequently, to be adapted to the various crises of human affairs. Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.”) (citations omitted).

**12. Is the death penalty constitutional?**

Response: The Supreme Court has held that the death penalty is constitutional. *Gregg v. Georgia*, 96 S.Ct. 2909 (1976). The Supreme Court has also observed some limitations to the death penalty. *See Atkins v. Virginia*, 122 S.Ct. 2242 (2002) (prohibiting the execution of mentally retarded offenders); and *Roper v. Simmons*, 125 S.Ct. 1183 (2005) (prohibiting the execution of those who were under 18 at the time of the offense). As a district judge, I will follow Supreme Court and Fifth Circuit precedent should these issues come before me.

**13. Please describe the legal basis that allows federal courts to issue universal injunctions.**

Response: Injunctions are governed by Rule 65 of the Federal Rules of Civil Procedure. In order to obtain an injunction, the movant must satisfy four criteria: 1) a likelihood of success on the merits; 2) an irreparable injury that will result if an injunction is not granted; 3) the harm to the movant if the injunction is not granted outweighs the harm to the defendant if the injunction is granted; and 4) the injunction would serve the public interest. The Fifth Circuit has recognized that the Constitution vests federal district courts with the “judicial power of the United States” that is not limited to the district where the court sits but extends across the country. Thus, it is within the court’s power, when necessary, to issue a universal (nationwide) injunction. *See Texas v. United States*, 809 F.3d 134, 188 (5th 2015).

**14. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.**

Response: Judge Carl Stewart currently serves on the 5<sup>th</sup> Circuit Court of Appeals. He was the first African American appointed to this court as it is currently constituted and was the first African American to serve as Chief Judge of this court. He is based in Shreveport and I have always been inspired by his involvement in the legal profession and in the community. He is a charter member of our local Inn of Court and has served two terms as President of the American Inns of Court. He has served on several boards of local community organizations, and he has always been a promoter of the Boy Scouts. If I am confirmed, I will strive to have an impact on the legal profession and the community as Judge Stewart has done. Judges have a unique role in the legal profession because lawyers listen when judges speak. Judges can have a unique impact on advancing professionalism and civility in the profession. Judges also have a unique role in the community. People in the community listen when judges speak and judges can play an important part of making sure that people understand the rule of law and thus build confidence in our system of justice.

**Questions from Senator Thom Tillis**  
**for Jerry Edwards, Jr. Nominee to be United States District Court Judge for the Western**  
**District of Louisiana**

- 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, (11th ed. 2019). Judicial activism is not appropriate.

- 3. Do you believe impartiality is an aspiration or an expectation for a judge?**

Response: Impartiality should be expected from 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: Virtually every case resolved by the court results in an undesirable outcome for one of the parties. As a district judge, I will ensure that the reasoning for my rulings is clearly based on the facts and the law and stated in the record.

- 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 scrupulously follow Supreme Court precedent on the Second Amendment as recently set forth in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008), *McDonald v. Chicago*, 130 S.Ct. 3020 (2010), and *New York State Rifle & Pistol Association, 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?**

Response: I would apply the standard recently articulated by the United States Supreme Court: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2129-2130 (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: Qualified immunity prevents suits against law enforcement personnel when they are acting within their official capacity to carry out their duties, unless they have violated a clearly established constitutional or statutory right. *See Pearson v. Callahan*, 129 S.Ct. 808, 815 (2009). Qualified immunity is different from an affirmative defense (such as comparative fault or failure to mitigate damages), it is immunity from suit. *Id.*; *Carswell v. Camp*, 54 F.4th 307, 310 (5th Cir. 2022). Therefore, my process when considering qualified immunity cases will be to decide whether it applies at the beginning of the case to prevent the defendant from incurring unnecessary legal expense.

**10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?**

Response: If I am confirmed, I will follow Supreme Court and Fifth Circuit precedent on qualified immunity. It would be inappropriate for me to comment on the merits of qualified immunity jurisprudence in light of Canon 3(A)(6) of the Code of Conduct for United States Judges.

**11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: Please see my responses to questions 9 and 10.

**12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?**

Response: If confirmed to serve as a district court judge, I will follow the applicable Supreme Court and Fifth Circuit precedent regarding patent eligibility. Further, it would be

inappropriate for me to offer an opinion on the Supreme Court's patent eligibility jurisprudence as it could cause parties to believe that I have prejudged the matter which would be a violation of Canon 3(A)(6) of the Code of Conduct for United States Judges.

- 13. Do you believe the current patent eligibility jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: See my answer to Question 12. If I am confirmed, I will carefully study and apply the Supreme Court's ineligibility tests in accordance with Supreme Court and Fifth Circuit precedent to the facts of each case.

- 14. 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 have not had the opportunity to research or litigate copyright law during my 13 years in private practice or in the last 4 and half years that I have been in the United States Attorney's Office.

- b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

Response: See my answer to Question 14a.

- c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?**

Response: See my answer to Question 14a.

- 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 not litigated First Amendment, free speech or intellectual property issues during my 13 years in private practice or in the last 4 and half years that I have been in the United States Attorney's Office.

- 15. 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 reported that 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 there is Fifth Circuit precedent interpreting the legislative text at issue, legislative history will not play a role in deciding how to apply the law to the facts of a particular case, as district court judges are bound to follow precedent. In the absence of binding precedent, legislative history could be a tool in interpreting ambiguous text, if the applicable rules statutory construction do not make the meaning of the text clear. However, the Supreme Court has cautioned that “legislative history is itself often murky, ambiguous, and contradictory.” *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 125 S.Ct. 2611, 2626 (2005).

- 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 there is binding precedent on the issue, the advice and analysis of the federal agency will not play a role in deciding how to apply the law to the facts of a particular case, as district court judges are bound to follow precedent. In the absence of binding precedent on the issue, and in the context of an agency’s interpretation of a statute or regulation, I will apply the framework of analysis set forth by the Supreme Court in cases such as *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 104 S.Ct. 2778 (1984), *Kisor v. Wilkie*, 139 S.Ct. 2400 (2019), *West Virginia v. Environmental Protection Agency*, 142 S.Ct. 2587 (2022), and *Biden v. Nebraska*, 143 S.Ct. 2355 (2023).

- 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: This question is one that could potentially be litigated before me, should I be confirmed; therefore, it would be inappropriate for me to offer an opinion as it could cause parties to believe that I have prejudged the matter which would be a violation of Canon 3(A)(6) of the Code of Conduct for United States Judges.



**16. 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 employ the framework of analysis set forth by the Supreme Court and the Fifth Circuit in cases involving digital environment laws. It would be inappropriate for me to comment further on the interpretation and application of digital environment laws, as such comments could be construed as a prejudgment of the issues and would not comport with Canon 3(A)(6) of the Code of Conduct for United States Judges.

**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 follow Supreme Court and the Fifth Circuit precedent. It would be inappropriate for me to comment further on the best method of interpretation and application of prior judicial opinions as such comments could be construed as a prejudgment of the issues and would not comport with Canon 3(A)(6) of the Code of Conduct for United States Judges.

**17. 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 this practice.**

**a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?**

Response: The Western District of Louisiana has 5 divisions, 3 of which have only one active judge. Our court has taken action to prevent forum shopping by implementing a system of random allotment of cases to all judges throughout the district regardless of the division of court in which the suit is filed.

**b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?**

Response: I believe the actions taken by the Western District of Louisiana discourage forum shopping.

- 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: I commit not to engage in “forum selling” if I am confirmed.

18. 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: I believe that all district courts should be encouraged to adopt some form of the random allotment procedure, such as the kind adopted by the Western District of Louisiana, if they are experiencing the concentration of litigation in a particular division in a manner that raises forum shopping concerns.

19. 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: See my answer to Question 18.

**Senator Lindsey Graham, Ranking Member**  
**Questions for the Record**  
**Philip S. Hadji**  
**Nominee to be a Judge for the Court of Federal Claims**

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 disagree with the idea that the role of judges is to exercise “independent value judgments.” The proper role of a judge is to interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would follow the law, including all Supreme Court and Federal Circuit precedent.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s stock response was, “They can’t catch ’em all.” Is this an appropriate approach for a federal judge to take?**

Response: I am not familiar with this quote and I do not find that it appropriately describes the way a judge should reach a decision. A judge should interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would follow the law, including all Supreme Court and Federal Circuit precedent.

3. **Please define the term “living constitution.”**

Response: Black’s Law Dictionary (11th ed. 2019) defines “living constitution” as “A constitution whose interpretation and application can vary over time according to changing circumstances and changing social values.”

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’m unfamiliar with the context of Justice Jackson’s quote and I am not sure what she meant by it. If confirmed, I would interpret the Constitution based on its text and structure, applying the precedent of the Supreme Court and the Federal Circuit.

5. **How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: Black’s Law Dictionary (11th ed. 2019) defines “attack” as: “The act of assailing either with physical violence or with sharp words.” It defines “ad hominem attack” as: “A personal dig or affront; specif., the criticism of an adversary’s character as opposed to the substance of the adversary’s arguments.” On the other hand, criticize is “to consider the merits and demerits of and judge accordingly.” “Criticize.” Merriam-

Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/criticize>. Put simply, based on these definitions, attacks are often personally-directed and may include violence whereas criticism centers on a more thoughtful analysis of the position at issue.

**6. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: Because I have never been a judge, I have not had the opportunity to implement a judicial philosophy and therefore cannot identify a Supreme Court decision that comports with my judicial philosophy. A judge should interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would apply this philosophy and work diligently on every case before me.

**7. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: 18 U.S.C. § 1507 imposes a fine, imprisonment for up to one year, or both, against: “[w]hoever, 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, 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.”

**8. Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: In *Cox v. Louisiana*, 379 U.S. 559, 561-64 (1965), the Supreme Court upheld a state statute modeled on 18 U.S.C. § 1507 against a facial constitutional challenge.

**9. What is the operative standard for determining whether a statement is not protected speech under the “fighting words” doctrine?**

Response: The Supreme Court has found “fighting words” to consist of “personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.” *Cohen v. California*, 403 U.S. 15, 20 (1971).

**10. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: Under the true threats doctrine, a statement does not constitute protected free speech 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.” *Virginia v. Black*, 538 U.S. 343, 359 (2003) (citation omitted). A true threat “cannot be determined solely by the reaction of the recipient, but must instead be determined by the interpretation of a reasonable recipient familiar with the context of the communication.” *Elonis v. U.S.*, 575 U.S. 723, 751 (2015) (citations and quotations omitted).

**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?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. Because the legal issues presented in *Brown v. Board of Education of Topeka* are unlikely to become the subject of litigation, I find it appropriate to state my view that *Brown* was correctly decided.

**b. Was *Loving v. Virginia* correctly decided?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. Because the legal issues presented in *Loving v. Virginia* are unlikely to become the subject of litigation, I find it appropriate to state my view that *Loving* was correctly decided.

**c. Was *Griswold v. Connecticut* correctly decided?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *Griswold v. Connecticut* is binding precedent of the Supreme Court. If confirmed, I would follow *Griswold* and all other binding precedents of the Supreme Court and Federal Circuit.

**d. Was *Roe v. Wade* correctly decided?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned *Roe v. Wade*. *Dobbs* is binding precedent of the Supreme Court. If confirmed, I would follow *Dobbs* and all other binding precedents of the Supreme Court and Federal Circuit.

**e. Was *Planned Parenthood v. Casey* correctly decided?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned *Planned Parenthood v. Casey*. *Dobbs* is binding precedents of the Supreme Court. If confirmed, I would follow *Dobbs* and all other binding precedents of the Supreme Court and Federal Circuit.

**f. Was *Gonzales v. Carhart* correctly decided?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *Gonzales v. Carhart* is binding precedent of the Supreme Court. If confirmed, I would follow *Gonzales v. Carhart* and all other binding precedents of the Supreme Court and Federal Circuit.

**g. Was *District of Columbia v. Heller* correctly decided?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *District of Columbia v. Heller* is binding precedent of the Supreme Court. If confirmed, I would follow *Heller* and all other binding precedents of the Supreme Court and Federal Circuit.

**h. Was *McDonald v. City of Chicago* correctly decided?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *McDonald v. City of Chicago* is binding precedent of the Supreme Court. If confirmed, I would follow *McDonald* and all other binding precedents of the Supreme Court and Federal Circuit.

**i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent of the Supreme Court. If confirmed, I would follow *Hosanna-Tabor* and all other binding precedents of the Supreme Court and Federal Circuit.

**j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *New York State Rifle & Pistol Association v. Bruen* is binding precedent of the Supreme Court. If confirmed, I would follow *Bruen* and all other binding precedents of the Supreme Court and Federal Circuit.

**k. Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *Dobbs v. Jackson Women's Health Organization* is binding precedent of the Supreme Court. If confirmed, I would follow *Dobbs* and all other binding precedents of the Supreme Court and Federal Circuit.

**12. 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.

**13. 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.

**14. 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.

**15. 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.

**16. 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.

- 17. Please describe the selection process that led to your nomination to be a Court of Federal Claims Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: In May 2021, I communicated with the office of Senator Sherrod Brown about my interest in a vacancy on the U.S. Court of Federal Claims. On May 24, 2021, I interviewed with staff members of Senator Brown's office about the position. On October 19, 2021, Senators Brown and Rob Portman sent a letter to President Biden recommending me to fill a vacancy on the U.S. Court of Federal Claims. Senator Bill Cassidy also recommended me for the position. On February 14, 2023, the White House Counsel's Office began communicating with me about my interest in the position and I interviewed with attorneys from that Office on February 17, 2023. Since March 18, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 7, 2023, the President announced his intent to nominate me, and on June 8, 2023, my nomination was submitted to the Senate.

- 18. 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.

- 19. 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.

- 20. 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.

- 21. 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.

- 22. 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.

- 23. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: On February 14, 2023, the White House Counsel's Office began communicating with me about my interest in the position and I interviewed with attorneys from that Office on February 17, 2023. Since March 18, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice.

- 24. Please explain, with particularity, the process whereby you answered these questions.**

Response: I drafted all answers by myself. I submitted my draft answers to attorneys in the Office of Legal Policy at the Department of Justice for limited feedback. Where I deemed it appropriate, I revised my answers based on this feedback.

Senate Judiciary Committee  
Nominations Hearing  
July 12, 2023  
Questions for the Record  
Senator Amy Klobuchar

**For Philip Serge Hadji, nominee to be Judge for the United States Court of Federal Claims:**

The Court of Federal Claims was formed to hear claims by people against the federal government, which include takings claims, government contracts, and military pay claims. It has been referred to as “the People’s Court.”

- **In your view, does the Court of Federal Claims have a special duty to *pro se* litigants who represent themselves before the court, but may be unfamiliar with litigation or court procedure?**

Response: Judges have an obligation to treat all parties fairly to ensure that each dispute before the court is resolved based on the facts of the case and the law. This duty applies to both *pro se* litigants and litigants represented by counsel.

- **What steps will you take to ensure that *pro se* litigants receive a fair hearing in your court?**

Response: *Pro se* litigants often present judges with challenges because they are not necessarily as sophisticated about procedure and law. I would ensure that *pro se* litigants are aware of all resources available to them to assist them with their cases. For example, the Court of Federal Claims maintains a public website specifically tailored for *pro se* litigants (*see* <https://www.uscfc.uscourts.gov/pro-se-information>). More generally, if confirmed, I would work tirelessly to ensure that all parties receive the justice that the public deserves and expects from our courts.

**On the side of the Court of Federal Claims courthouse is a quote from Lincoln that says: “It is as much the duty of government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals.”**

- **Can you discuss the importance of the role of the Court of Federal Claims, and if confirmed how you intend to apply the sentiment expressed by Lincoln?**

Response: As Lincoln's sentiment underscores, the Court of Federal Claims plays a vital role in holding the Federal Government accountable to its citizens. It is the only forum in our federal court system with national jurisdiction for monetary claims against the United States which enables citizens to seek money from the Federal Government on an equal footing with the Federal Government. The Court of Federal Claims epitomizes one of the highest ideals of our country – the Rule of Law. Its jurisdiction is possible because of statutes that waive the sovereign immunity of United States so that any citizen can bring a suit against their government. If confirmed, I would do all that I could to ensure Lincoln's sentiment is carried out as intended and enable this great institution to continue to carry out these important American ideals.

**Senator Mike Lee****Questions for the Record****Philip Hadji, Nominee to the United States Court of Federal Claims**

1. **What legal experience do you think is necessary for a person to make a good Court of Federal Claims judge, and what have you done to gain this experience?**

Response: It is important to have legal experience in at least one of the practice areas of the Court's jurisdiction. A major part of the docket of the Court of Federal Claims is government contract law matters, which includes contract claims and bid protests. I have handled an extensive range of government contract law matters, including bid protest litigation, litigation of contract claims, contract fraud investigations, debarments, significant contract awards, contract performance issues, energy contracts, IT infrastructure and service contracts, and data rights issues.

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

Response: A judge should interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would apply this philosophy and work diligently on every case before me.

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

Response: I would interpret a federal statute based on its text and structure, applying the precedent of the Supreme Court and the Federal Circuit. If faced with a question that has not been interpreted by the Supreme Court or the Federal Circuit, where the text and structure do not address the question, I would use canons of construction prescribed by the Supreme Court and the Federal Circuit in interpreting similar or analogous provisions.

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

Response: I would interpret a constitutional provision based on the Constitution's text and structure, applying the precedent of the Supreme Court and the Federal Circuit. If faced with a provision that has not been interpreted by the Supreme Court or the Federal Circuit, where the text and structure do not resolve the question, I would use canons of construction prescribed by the Supreme Court and the Federal Circuit in interpreting similar or analogous provisions.

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

Response: If faced with a provision that has not been interpreted by the Supreme Court or the Federal Circuit, where the text and structure do not resolve the question, looking to the original public meaning may be appropriate as instructed by the Supreme Court. For example, the Supreme Court has looked to the original public

meaning in interpreting the text of the Second Amendment. *See District of Columbia v. Heller*, 554 U.S. 570 (2008).

**6. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: I would interpret a federal statute based on its text and structure, applying the precedent of the Supreme Court and the Federal Circuit. If faced with a question that has not been interpreted by the Supreme Court or the Federal Circuit, where the text and structure do not address the question, I would use canons of construction prescribed by the Supreme Court and the Federal Circuit in interpreting similar or analogous provisions.

**a. Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: The “plain meaning” of a constitutional provision refers to the public understanding of the relevant language at the time of enactment. For a statute, the relevant time is the time of enactment. *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1738 (2020). If confirmed as a judge on the Court of Federal Claims, I would follow the precedent of the Supreme Court and the Federal Circuit to determine the plain meaning of a statute or constitutional provision and the time at which that meaning is assessed.

**7. What are the requirements for standing in the Court of Federal Claims?**

Response: Even though it is an Article I court, the Court of Federal Claims generally follows the standing requirements of Article III courts. 28 U.S.C. § 2519; *Shinnecock Indian Nation v. United States*, 782 F.3d 1345, 1351 n.7 (Fed. Cir. 2015) (“Although the Court of Federal Claims is an Article I tribunal, it generally adheres to traditional justiciability standards applicable to courts established under Article III.”). A plaintiff must show that it has an injury in fact that is fairly traceable to the conduct of the United States and that is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560- 61 (1992); *Figueroa v. United States*, 466 F.3d 1023, 1029 (Fed. Cir. 2006).

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

Response: In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court found the Necessary and Proper Clause in Article I, Section 8, of the United States Constitution gives Congress certain implied powers that are not explicitly enumerated in the Constitution.

**9. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: If confirmed, I would examine the constitutionality of a statute enacted by Congress in which Congress made no reference to a specific enumerated power by carefully following the precedents of the Supreme Court and the Federal Circuit. The Supreme Court has held the determination of the constitutionality of action taken by Congress does not depend on recitals of the power it undertakes to exercise. *Nat'l Fed. Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012).

**10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Supreme Court has held the Constitution protects unenumerated rights only if those rights are “fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). These rights include the right to marry, *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015); *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); the right to interstate travel, *Saenz v. Roe*, 526 U.S. 489, 498 (1999); and the right to direct the education and upbringing of one’s children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925).

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

Response: The Supreme Court has held that substantive due process protects the right to privacy in the home, *Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to marry, *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015); *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), the right to interstate travel, *Saenz v. Roe*, 526 U.S. 489, 498 (1999), and the right to direct the education and upbringing of one’s children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925).

**12. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?**

Response: In *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court held that the Constitution does not protect a right to abortion. In *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), the Supreme Court held that the Constitution does not protect the economic rights at stake in *Lochner v. New York*. If confirmed, I would follow the precedents of the Supreme Court and the Federal Circuit.

**13. What are the limits on Congress’s power under the Commerce Clause?**



Response: Under the Commerce Clause, Congress' power is limited to (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even if the threat comes only from intrastate activities; and (3) activities that substantially affect interstate commerce. *United States v. Morrison*, 529 U.S. 598, 609 (2000).

**14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?**

Response: The suspect classes are race, religion, national origin, and alienage. In determining whether a group qualifies as a suspect class, the Supreme Court looks at whether the group is a "discrete and insular minority." *United States v. Carolene Products Co.*, 304 U.S. 144, 152-53 n.4 (1938). The Supreme Court's rationale is whether a particular group shares "traditional indicia of suspectedness," such as whether it has an "immutable characteristic determined solely by the accident of birth" or is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (citations and internal quotation marks omitted).

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

Response: In Federalist 51, Madison described the role that checks and balances and separation of powers play in the Constitution's structure. He stated: "[B]y so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places." His rationale for such a system was: "Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government."

**16. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?**

Response: I would consider the issues presented by the parties, determine the applicable law, including precedent of the Supreme Court and the Federal Circuit, and apply the applicable law to the facts of the case. I would pay particular attention to cases that have specifically addressed this type of issue such as *Nixon v. United States*, 506 U.S. 224, 226 (1993) (holding Senate has sole power to try all impeachments).

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

Response: A judge should interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would apply this philosophy and work diligently on every case before me.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as a "court's power to review the actions of other branches or levels of government; especially the courts' power to invalidate legislative and executive actions as being unconstitutional." Black's Law Dictionary (11th ed. 2019) defines "judicial supremacy" as the doctrine providing that "interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

**19. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?**

Response: All elected officials take an oath to uphold the Constitution, *see* U.S. Const., art. VI, § 3, and are required to adhere to duly rendered judicial decisions. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). Elected officials may also pass legislation or seek to amend the Constitution.

**20. What role does precedent play in the opinions of a Court of Federal Claims judge?**

Response: Judges on the Court of Federal Claims are required to follow precedent of the Supreme Court and the Federal Circuit. If confirmed, I would follow the precedent of the Supreme Court and the Federal Circuit.

**21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.**

Response: The Constitution limits the role of courts to cases and controversies. As Hamilton described in Federalist 78, the role of the legislative and executive branches is to make and enforce the law. A judge should interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would follow the precedent of the Supreme Court and the Federal Circuit.

22. **What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: Judges on the Court of Federal Claims are bound by the precedent of the Supreme Court and the Federal Circuit regardless of whether that precedent has “questionable constitutional underpinnings” or whether the precedent appears to depart from constitutional text, history, or tradition.

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

Response: None.

24. **The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition? If not, how would you define equity?**

Response: I am not familiar with the quoted definition or its context. Black’s Law Dictionary (11th ed. 2019) defines “equity” as “[f]airness; impartiality; evenhanded dealing” and “[t]he body of principles constituting what is fair and right; natural law.”

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

Response: Black’s Law Dictionary (11th ed. 2019) defines “equity” as “[f]airness; impartiality; evenhanded dealing” and “[t]he body of principles constituting what is fair and right; natural law”; it defines “equality” as “[t]he quality, state, or condition of being equal; esp., likeness in power or political status.”

26. **Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?**

Response: The Equal Protection Clause of the Fourteenth Amendment guarantees that “[n]o state shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV. If

confirmed, I would apply all Supreme Court and Federal Circuit precedents addressing the Equal Protection Clause when applicable. I am not aware of any precedent addressing the term “equity” as defined in this question.

**27. How do you define “systemic racism?”**

Response: Merriam-Webster’s Dictionary defines “systemic racism” as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems).” Merriam-Webster’s Dictionary, <https://www.merriam-webster.com/dictionary/systemic%20racism>.

**28. How do you define “critical race theory?”**

Response: Black’s Law Dictionary (11th ed. 2019) defines “critical race theory” as, “A reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities.”

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

Response: I have not studied “critical race theory” or “systemic racism.” I distinguish between these terms based on the definitions provided in response to the proceeding two questions.

**30. The Court of Federal Claims has been called “the keeper of the Nation’s conscience” and the “People’s court.” How do you see the court fulfilling such a role? How do you see yourself fulfilling this role if you are confirmed?**

Response: As highlighted by quotations describing it as “the keeper of the Nation’s conscience” and the “People’s court,” the Court of Federal Claims plays a vital role in holding the Federal Government accountable to its citizens. It is the only forum in our federal court system with national jurisdiction for monetary claims against the United States which enables citizens to seek money from the Federal Government on an equal footing with the Federal Government. The Court of Federal Claims epitomizes one of the highest ideals of our country – the Rule of Law. Its jurisdiction is possible because of statutes that waive the sovereign immunity of United States so that any citizen can bring a suit against their government. If confirmed, I would do all that I could to enable this great institution to continue to carry out these important American ideals.

**Questions from Senator Thom Tillis**  
**for Philip S. Hadji, Judicial Nominee to the United States Court of Federal Claims**

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

Response: Yes.

- 2. What is judicial activism? Do you consider judicial activism appropriate?**

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, 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 is inappropriate.

- 3. Do you believe impartiality is an aspiration or an expectation for a judge?**

Response: Impartiality is an expectation for a judge. Paragraph A of Canon 2 of the Code of Conduct for United States Judges provides that judges "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3 provides that judges should perform the duties of the office fairly and impartially.

- 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: Canon 3 provides that judges should perform the duties of the office fairly and impartially and should not be swayed by partisan interests, public clamor, or fear of criticism. Faithfully interpreting the law sometimes results in an undesirable outcome. If confirmed, I would reconcile this concern by trusting that litigants have the opportunity to appeal any decision and that a government based on the rule of law is the best possible model.

- 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 applicable Supreme Court and Federal Circuit precedent including *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008) (finding the Second Amendment protects an individual right to keep and bear arms for lawful purposes, including to keep a usable handgun in the home for self-defense), *McDonald v. Chicago*, 561 US 742 (2010) (applying the Second Amendment right to keep and bear arms for the purpose of self-defense applicable to the states), and *New York State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111, 2122 (2022) (finding the Second Amendment's individual right to keep and bear arms for lawful purposes includes the right to carry a gun for self-defense outside the home).

**8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?**

Response: I would closely examine the issues presented by the parties, review applicable law, including precedent of the Supreme Court in *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) and apply the law to the facts of the case.

**9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?**

Response: As a lawyer for the Navy Office of the General Counsel for almost 12 years with a practice focused on government contract law matters, I have not been presented the opportunity to consider a qualified immunity matter and do not expect that I will be presented with such an issue if confirmed as a judge on the Court of Federal Claims. If presented with such an issue, I would closely examine the issues presented by the parties, review applicable law, including precedent of the Supreme Court, and apply the law to the facts of the case. The Supreme Court has held that qualified immunity protects government officials "insofar as their conduct does 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) (internal citations omitted).

**10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?**

Response: Whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers is a policy question best addressed to policy makers. The Supreme Court has held that qualified immunity protects government officials "insofar as their conduct does 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) (internal citations omitted). If confirmed, I would follow all Supreme Court and Federal Circuit precedent.

**11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: The proper scope of qualified immunity is a policy question best addressed to policy makers. The Supreme Court has held that qualified immunity protects government officials “insofar as their conduct does 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) (internal citations omitted). If confirmed, I would follow all Supreme Court and Federal Circuit precedent.

- 12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court’s patent eligibility jurisprudence?**

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. The issue of patent eligibility is currently pending before the Supreme Court on certiorari, *Interactive Wearables, LLC, v. Polar Electro Oy*, S. Ct. No. 21-1281; *Tropp v. Travel Sentry, Inc.*, S. Ct. No. 22-22. If faced with a question of patent eligibility, I would apply the law and the precedent of the Supreme Court and the Federal Circuit.

- 13. Do you believe the current patent eligibility 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 the previous question.

- 14. 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: Through my work as an attorney with the Navy Office of the General Counsel, I have worked on a number of government contract matters involving proposed contracts or executed contracts containing provisions that address copyrights and other intellectual property matters. My role in these matters has been to protect the intellectual property interests of the Navy in a manner that conforms to applicable law and Navy policy.

**b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

Response: While I have worked on intellectual property issues in the context of government contracts involving the Navy, I cannot think of an example that involved 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 experience with intellectual property law has been in the context of government contracts involving the Navy. My role in these matters has been to protect the intellectual property interests of the Navy in a manner that conforms to applicable law and Navy policy. I cannot think of a time where I specifically worked on a matter 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: My experience with intellectual property law has been in the context of government contracts involving the Navy. My role in these matters has been to protect the intellectual property interests of the Navy in a manner that conforms to applicable law and Navy policy. I cannot think of a time where I worked on a First Amendment or free speech issue.

**15. 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 reported that 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, I would start any inquiry into statutory interpretation by looking to Supreme Court and Federal Circuit precedent. If faced with an issue where there is no precedent on point, I would first look at the text of the statute itself. My analysis would end there if the statutory text is clear. However, if the text was ambiguous, I would carefully consider other sources authorized by the Supreme Court and Federal Circuit including canons of construction, persuasive precedent



from other courts, and finally legislative history. The Supreme Court has found that it is only appropriate to use legislative history when necessary to interpret ambiguous statutory text. *BedRoc Limited, LLC v. United States*, 541 U.S. 176, 187 n.8 (2004). The Supreme Court has also explained that full committee reports have greater probative value than statements of individual members of Congress. *Garcia v. United States*, 469 U.S. 70, 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: The appropriate amount of deference to a federal agency, if any, is an inquiry that depends on, *inter alia*, whether the provision of the statute at issue is ambiguous (known as *Chevron* deference), *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and whether the provision of the statute involves an issue of “economic and political significance” whereby clear Congressional authorization for deference is required (known as the Major Questions Doctrine). *W. Virginia v. Env’t Prot. Agency*, 142 S. Ct. 2587, 2595 (2022). The Supreme Court is scheduled to consider the issue of *Chevron* deference next term in *Loper Bright Enterprises v. Raimondo*. S. Ct. No. 22-451. If confirmed, I would follow all precedent of the Supreme Court and the Federal Circuit.

- c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?**

Response: If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit on any issue involving the application and interpretation of the copyright laws. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on how I would address this issue.

- 16. 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: Please see my response to the first two parts of the previous question.

- 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 would apply applicable law including the precedent of the Supreme Court and the Federal Circuit to the facts of the case. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue.

- 17. 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 this practice.**

- a. Do you see “judge shopping” and “forum shopping” as a problem in litigation?**

Response: It is my understanding that at the Court of Federal Claims cases are assigned randomly so a litigant cannot shop for judges. If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit, and the rules of the Court of Federal claims. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue any further.

- b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?**

Response: If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit, and the rules of the Court of Federal claims. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue.

- 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: If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit, and the rules of the Court of Federal claims. Canon 3

of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue.

**d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?**

Response: If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit, and the rules of the Court of Federal claims. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue.

**18. 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: It is always appropriate for policymakers to consider whether rules can be improved.

**19. 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: It is my understanding that at the Court of Federal Claims cases are assigned randomly so a litigant cannot shop for judges. If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit, and the rules of the Court of Federal claims. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue.

**Senator Lindsey Graham, Ranking Member  
Questions for the Record  
Mr. Brandon Scott Long**

**Nominee to be a United States District Judge for the Eastern District of Louisiana**

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 do not agree with this statement. Judges are required to follow the law, not their own value judgments. Canon 2(A) of the Code of Conduct for U.S. Judges cautions judges to “respect and comply with the law” and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s stock response was, “They can’t catch ’em all.” Is this an appropriate approach for a federal judge to take?**

Response: I am not familiar with the context of this quote, and I would not follow this approach. If confirmed, I will be obligated to follow the binding precedent of the Supreme Court and the Fifth Circuit Court of Appeals. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) (“[A] precedent of this Court must be followed by the lower federal courts[.]”).

3. **Please define the term “living constitution.”**

Response: Living constitutionalism 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).

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 am not aware of the context of this statement. However, the Supreme Court has held that the Constitution contains enduring principles that are generally fixed in meaning. *See New York State Rifle & Pistol Ass’n, v. Bruen*, 142 S. Ct. 2111, 2132 (2022). I know of no case where the Supreme Court has directed lower courts to use a living constitutionalism method of interpretation. If confirmed as a district judge, I will follow all Supreme Court and Fifth Circuit precedent concerning interpretative methods of analysis.

5. **According to your questionnaire, you served on detail to the FBI in 2020-2021 and were the Acting Chief of Staff to Director Wray for short time that included January 2021.**

Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the responses below.

- a. **Please describe your duties as Deputy Chief of Staff and Acting Chief of Staff.**

Response: From February 2020 to July 2021, I was on “detail” from the U.S. Attorney’s Office in New Orleans to the FBI in Washington, DC. As Deputy Chief of Staff and Acting Chief of Staff to the FBI Director, I supported the Director’s Office on various policy, public affairs, and administrative matters. By way of example, I assisted with the preparation of many of the Director’s public statements and internal communications, advised on media appearances and congressional engagements, worked with the Department of Justice on policy matters affecting the FBI, and helped oversee components of the Director’s Office staff. In these roles, I did not have oversight or decision-making authority over investigations, I did not personally participate in any investigations, and I was outside of what I would call the “operational chain of command.” At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases, investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director’s staff are thus outside of the operational chain of command.

- b. **Please describe your duties and role regarding the events that occurred on January 6<sup>th</sup> and the subsequent investigation.**

Response: As Acting Chief of Staff from December 2020 to January 2021, and Deputy Chief of Staff from January 2021 until my departure in July 2021, I had the duties and role described in response to question 5(a). I had no role in preparing for the events at the U.S. Capitol on January 6, 2021. I did not have decision-making authority regarding the deployment of FBI resources to address

the violence and destruction of property on January 6. And I have not personally participated in the subsequent investigations of illegal conduct on January 6.

- c. **Were you involved with any decision to investigate (or not investigate) allegations against or involving Hunter Biden?**

Response: No.

- i. **If yes, please explain.**

6. **Under Supreme Court and Fifth 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: Black’s Law Dictionary (11th ed. 2019) defines a “fact” as “[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation.” The Supreme Court has noted that the nature of the distinction between questions of fact and questions of law is “vexing.” *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982) “[O]ften questions of fact and questions of law are inextricably entangled.” *Coca-Cola Co. v. Atchison, T. & S. F. Ry. Co.*, 608 F.2d 213, 218 (5th Cir. 1979). However, the distinction is important to the determination of whether appellate review requires the clear error standard (questions of fact), *see* Fed. R. Civ. P. 52(a)(6), or the *de novo* standard (questions of law), *see Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014). While bright-line rules are scarce, it is commonplace for courts to treat questions of intent as factual matters. *See Pullman-Standard*, 456 U.S. at 287–288 (collecting cases); *Byram v. United States*, 705 F.2d 1418, 1423 (5th Cir. 1983). In determining whether an issue presents a question of fact or law, I would closely study precedent in the Supreme Court and Fifth Circuit and follow whatever guidance or sources are permitted under that precedent.

7. **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 is lawful and protected under the First Amendment. Personal attacks on a sitting judge can be both unethical, *see, e.g.*, Rules 3.5(d), 8.2(a), and 8.4(d), ABA Model Rules of Professional Conduct; as well as illegal, *see, e.g.*, 18 U.S.C. § 401 (contempt) and § 1503 (influencing or injuring a judge).

8. **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: The process of sentencing a criminal defendant is designed to be highly individualized. Judges are required to consider a variety of factors under 18 U.S.C. § 3553(a), including *inter alia* the nature and circumstances of the criminal offense, the defendant's history and characteristics, the need to provide restitution to victims, and the four purposes of sentencing outlined in the question. The statute does not elevate any one purpose above the others. A judge's job is to assess each defendant's case on its own merits with rigor and objectivity—giving due consideration as required to the § 3553(a) factors, the U.S. Sentencing Guidelines, the Presentence Report, the arguments of the parties, and any statements by the defendant and the victims—in order to devise a sentence that is consistent, fair, and proportional under the law. If confirmed, I will do just that.

9. **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 begins with assiduously following the laws passed by Congress, precedent in the Supreme Court and the Fifth Circuit Court of Appeals, and the Constitution to which I've sworn an oath. I will work hard to have command of the relevant areas of law each time I walk into court or render a decision. I will listen carefully to the testimony and arguments of the parties and keep an open mind throughout the proceedings. I will be respectful of all litigants, witnesses, courtroom staff, and juries, and set a tone of decorum in the courtroom. And I will remain humble, understanding the limitations of my role and placing the law and the facts above any personal preferences I may have. I have not assessed whether a particular Supreme Court decision best represents this philosophy, but I am fortunate to have appeared before countless judges over my career as a federal prosecutor who have exhibited these qualities.

10. **Please identify a Fifth 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 9.

11. **Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: Title 18, United States Code, Section 1507 makes it a crime, punishable by up to one year in prison, to picket or parade in or near a United States court building, or in or near a building or residence used by a judge, juror, witness, or court officer, with intent to interfere with, obstruct, or impede the administration of justice, or to influence any judge, juror, witness, or court officer in the discharge of his/her duty, among other offenses.

12. **Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: If confirmed as a judge, my role would be to apply this and other laws fairly and neutrally to the facts of any case before me. If a question was raised as to the statute's constitutionality, I would assess the matter based on Supreme Court and Fifth Circuit precedent, including *Cox v. Louisiana*, 379 U.S. 559, 564 (1965) (upholding a similar Louisiana statute on its face), the text of the statute, the facts before the court, and the arguments of the parties.

**13. What is the operative standard for determining whether a statement is not protected speech under the “fighting words” doctrine?**

Response: “Fighting words” are “personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.” *Cohen v. California*, 403 U.S. 15, 20 (1971). In assessing what speech falls into this “small class,” courts will ask whether a “reasonable onlooker” would understand the speech as a “direct personal insult or an invitation to exchange fisticuffs.” *Texas v. Johnson*, 491 U.S. 397, 409 (1989).

**14. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: “True threats of violence are outside the bounds of First Amendment protection and punishable as crimes.” *Counterman v. Colorado*, 143 S. Ct. 2106, 2111 (2023). In *Counterman*, the Supreme Court recently held that whether a statement was a “true threat” depended on the speaker’s subjective intent to threaten. *Id.* In making this assessment, courts have been directed to use a recklessness standard, *i.e.*, whether the defendant “consciously disregarded a substantial risk that his communications would be viewed as threatening violence.” *Id.* at 2112.

**15. 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 district court judge, I would be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment. Moreover, the Code of Conduct for U.S. Judges precludes me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. As other nominees have observed, however, the issues in *Brown* involving school desegregation are unlikely to be relitigated in any court. Accordingly, I can express my belief that *Brown* was correctly decided.

**b. Was *Loving v. Virginia* correctly decided?**



Response: Yes. As a district court judge, I would be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment. Moreover, the Code of Conduct for U.S. Judges precludes me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. As other nominees have observed, however, the issues in *Loving v. Virginia* involving interracial marriage are unlikely to be relitigated in any court. Accordingly, I can express my belief that the case was correctly decided.

- c. **Was *Griswold v. Connecticut* correctly decided?**
- d. **Was *Roe v. Wade* correctly decided?**
- e. **Was *Planned Parenthood v. Casey* correctly decided?**
- f. **Was *Gonzales v. Carhart* correctly decided?**
- g. **Was *District of Columbia v. Heller* correctly decided?**
- h. **Was *McDonald v. City of Chicago* correctly decided?**
- i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
- j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**
- k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: With respect to subparts c. through k., I am unable to give a “yes” or “no” answer. Any personal beliefs I may have about a decision are of no moment. Moreover, the Code of Conduct for U.S. Judges precludes me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. However, I would note that *Roe v. Wade* and *Planned Parenthood v. Casey* are no longer binding precedent, having been overturned by *Dobbs v. Jackson Women's Health*. As a district court judge, I would be obligated to faithfully follow binding Supreme Court precedent.

**16. 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*, the Supreme Court held that when the Second Amendment's text covers an individual's conduct, the Constitution “presumptively protects that conduct.” 142 S. Ct. 2111, 2129-30 (2022). The government must then justify any restriction on the Second Amendment's “unqualified command” by demonstrating that the restriction is consistent with the Nation's historical tradition of firearm regulation. *Id.* at 2130. The Court explained that “analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin.” *Id.* at 2133.

**17. 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?

Response: No, to the best of my knowledge (as to each subpart).

18. 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?

Response: No, to the best of my knowledge (as to each subpart).

19. 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.**

Response: No, to the best of my knowledge (as to each subpart).

**20. 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?**
- 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?**

Response: No, to the best of my knowledge (as to each subpart).

**21. 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?**

Response: No, to the best of my knowledge (as to each subpart).

**22. 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 December 21, 2022, I submitted my resume to the office of Senator Bill Cassidy after the announcement that the Honorable Carl J. Barbier of the Eastern District of Louisiana would be taking senior status. On January 17, 2023, I interviewed with Senator Cassidy. On March 8, 2023, I interviewed with attorneys from the White House Counsel’s Office. On March 10, 2023, I interviewed with Senator John N. Kennedy. On March 17, 2023, I was contacted by the White House Counsel’s Office and informed that

I would be moving forward in the selection process. I was then in contact at various points with attorneys from the Office of Legal Policy at the Department of Justice and with staff members from the offices of Senators Cassidy and Kennedy. On June 7, 2023, the President announced his intent to nominate me. Since that time, I have spoken at various points with attorneys from the Office of Legal Policy and the White House Counsel's Office, as well as staff members from the offices of Senators Cassidy and Kennedy.

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, to the best of my knowledge.

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, to the best of my knowledge.

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, or any other such Arabella dark-money fund that is still shrouded.**

Response: No, to the best of my knowledge.

26. **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, to the best of my knowledge.

27. **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, to the best of my knowledge.

28. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: On December 21, 2022, I submitted my resume to the office of Senator Bill Cassidy after the announcement that the Honorable Carl J. Barbier of the Eastern District of Louisiana would be taking senior status. On January 17, 2023, I interviewed with

Senator Cassidy. On March 8, 2023, I interviewed with attorneys from the White House Counsel's Office. On March 10, 2023, I interviewed with Senator John N. Kennedy. On March 17, 2023, I was contacted by the White House Counsel's Office and informed that I would be moving forward in the selection process. I was then in contact at various points with attorneys from the Office of Legal Policy at the Department of Justice and with staff members from the offices of Senators Cassidy and Kennedy. On June 7, 2023, the President announced his intent to nominate me. Since that time, I have spoken at various points with attorneys from the Office of Legal Policy and the White House Counsel's Office, as well as staff members from the offices of Senators Cassidy and Kennedy.

**29. Please explain, with particularity, the process whereby you answered these questions.**

Response: On July 19, 2023, the Office of Legal Policy (OLP) forwarded these questions, as well as questions received from other Senators. I drafted responses and sent them to OLP for review. OLP provided feedback on my draft. I considered that feedback and made edits where I deemed appropriate. I then sent a final version of my responses to OLP for submission to the Senate.

Senate Judiciary Committee  
Nominations Hearing  
July 12, 2023  
Questions for the Record  
Senator Amy Klobuchar

**For Brandon Scott Long, nominee to be United States District Court Judge for the Eastern District of Louisiana**

**You served as Deputy Chief of Staff and eventually Acting Chief of Staff to F.B.I. Director Christopher Wray. You have also served as an Assistant United States Attorney for nearly 12 years, both the Eastern District of Louisiana and the District of Columbia.**

- **How have these experiences informed your view of the criminal justice system?**

Response: Every day of my service as a Department of Justice employee, I have sought to remain mindful of the heavy burden that falls on my shoulders. That burden is to investigate and prosecute cases with earnestness and vigor, but give equal consideration to ensuring that no one is prosecuted unjustly. I have grown fond of saying that I've never had a single bad day as a prosecutor. Because when I go home at the end of the day, whether I've won or lost in court, having faithfully followed the law, having been objective and open-minded in my assessment of the facts, and having treated the court, opposing counsel, the defendant, and the victims with respect and fairness, I've done my part to uphold the ideal that justice be done in every case. If confirmed, I will take those same sensibilities with me to the bench.

**Federal district court judges manage a large number of cases at one time that touch a wide range of areas of the law, while also ensuring that the litigants who appear before them feel that they have had their day in court.**

- **How have you approached areas of the law that you were unfamiliar with, and what in your background has prepared you to manage a federal district court judge's docket?**

Response: On countless occasions throughout my career, circumstances have required me to learn new areas of law quickly—whether delving into complicated conspiracy law in preparation for a fast-approaching trial, or researching a thorny area of privilege law to meet a motion deadline, or analyzing a complex trial record on appeal. My approach in all such instances has been to jump in head-first, performing research and analysis of the law, thoroughly running to ground the facts, rigorously preparing my arguments, and when feasible and appropriate consulting with more experienced colleagues. My approach as a judge would be similar. That is, I would always be prepared, which means having command of the law and facts each time I walk into court or decide a case. I would listen closely to the testimony and arguments of the parties and keep an open mind. I would be humble, understanding the limitations of my role and placing the law

and the facts above any personal preferences I may have. I would set clear expectations for the litigants through scheduling orders and deadlines. I would draft my rulings in a way that was clear and concise, leaving little room to doubt the underpinnings of my decision. And, of course, I would seek to reach a fair and just decision under the law in every case. Following this approach will allow me to manage my docket efficiently and will engender confidence in the court and in my decisions.

**Senator Charles Grassley Questions for the Record**

**July 12, 2023**

**Brandon Long, Nominee for U.S. District Court for the Eastern District of Louisiana**

1. **On January 23, 2023, the FBI Richmond, Virginia field office issued a report, with little or no basis or supporting examples, linking traditional Catholic churches to racial and ethnic violent extremism.<sup>1</sup> The report suggested that FBI agents should infiltrate Catholic churches to find informants and gather information about their activities. After the report was brought to light, Attorney General Garland said it was “appalling” and “inappropriate,” and the FBI withdrew the report.<sup>2</sup> You nonetheless failed to denounce the report during your July 12, 2023, nomination hearing before the Senate Judiciary Committee.**

Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the responses below.

- a. **During your time as Deputy Chief of Staff and Acting Chief of Staff for FBI Director Chris Wray, did you become aware of any discussions, proposals and/or communications related to the FBI investigating and infiltrating Catholic churches to gather information on violent extremism? If so, what actions did you take to stop that improper FBI activity?**

Response: During my time as a detailee to the FBI from February 2020 through July 2021, I was not aware of any discussions, proposals, or communications related to the FBI investigating and infiltrating Catholic churches to gather information on violent extremism. My understanding is that the Richmond memo, which to my knowledge I have never seen, was authored in January 2023, over a year and a half after I left the FBI. According to media reports, the memo originated from the FBI’s Richmond field office. As a member of the FBI Director’s staff, I never visited the Richmond field office and have no recollection of working with anyone in Richmond.

- b. **Is the Richmond field office report “appalling” and “inappropriate”? If not, why not?**

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<sup>1</sup> Senator Charles E. Grassley and Senator Lindsey O. Graham, *Letter to Attorney General Garland and FBI Director Chris Wray*, (Mar. 1, 2023) [https://www.grassley.senate.gov/imo/media/doc/grassley\\_graham\\_to\\_doj\\_fbi\\_richmond\\_fbi\\_catholic\\_report.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley_graham_to_doj_fbi_richmond_fbi_catholic_report.pdf).  
<sup>2</sup> Senate Committee on the Judiciary, *Oversight of the Department of Justice*, (Mar. 1, 2023) <https://www.judiciary.senate.gov/committee-activity/hearings/02/22/2023/oversight-of-the-department-of-justice>.



Response: Since completing my FBI detail in July 2021, I have been serving as a line Assistant U.S. Attorney in New Orleans, where I have never been asked to work on a case involving the Catholic Church. (As an aside, I am a Catholic.) At the time of my confirmation hearing, I had only a cursory understanding of the media coverage surrounding the January 2023 FBI memo. Having now reviewed the coverage more closely, I would agree with the assessment of the Attorney General that the memo was “appalling” and “inappropriate.” I would also agree with the assessment of the FBI Director, who said that he was “aghast” when the memo came to his attention and ordered that the memo be withdrawn.

As a general matter, as a judicial nominee and consistent with Canon 3(A) of the Code of Conduct for U.S. Judges, I cannot comment on a matter that could come before me, as that would be seen as prejudging an issue. However, I am willing to comment on this matter because the memo has been withdrawn and denounced by the Attorney General and FBI Director. That suggests litigation around the memo is not likely to come before me.

- c. Do you believe that it is proper for the FBI to target and place informants in Catholic churches to investigate the exercise of their First Amendment activity? If so, please explain.**

Response: No.

- 2. Did you have any involvement, awareness and/or communications relating to any aspect of the Hunter Biden investigative matter, and related matters, while at the FBI?**

Response: As the Deputy and Acting Chief of Staff from February 2020 through July 2021, I did not have oversight or decision-making authority over investigations, and I did not personally participate in any investigations (including those referenced in the question). In that sense, I was outside of what I would call the “operational chain of command.” At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases, investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director’s staff are thus outside of the operational chain of command.

While the Hunter Biden matter was the subject of media coverage during my time at the FBI, and it’s possible I had one-off conversations with colleagues in passing regarding the media coverage, I was not involved in the Hunter Biden investigation in any way. I was not aware of, nor did I participate in, any investigative decisions or steps regarding

the matter. And I was not involved in, nor did I attend, any meetings relating to the matter. As a Department of Justice employee subject to the Justice Manual, Sections 1-7.001 et seq., as well as a judicial nominee subject to the Code of Conduct for U.S. Judges, specifically Canon 3(A)(6) prohibiting public comment on a pending matter and Canon 2(A) requiring judges to avoid the appearance of having prejudged any possible related matters, it would be inappropriate for me to comment further on any open investigations.

**Senator Mike Lee**  
**Questions for the Record**  
**Brandon Long, Nominee to the United States District Court for the Eastern District of Louisiana**

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

Response: My judicial philosophy begins with assiduously following the laws passed by Congress, precedent in the Supreme Court and the Fifth Circuit Court of Appeals, and the Constitution to which I've sworn an oath. I will work hard to have command of the relevant areas of law each time I walk into court or render a decision. I will listen carefully to the testimony and arguments of the parties and keep an open mind throughout the proceedings. I will be respectful of all litigants, witnesses, courtroom staff, and juries, and set a tone of decorum in the courtroom. And I will remain humble, understanding the limitations of my role and placing the law and the facts above any personal preferences I may have.

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

Response: I would begin by closely reviewing any Supreme Court or Fifth Circuit precedent. If precedent exists, I would follow precedent. If not, I would seek to ascertain the plain meaning of the statute, focusing on the "ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1739 (2020). If the statute was still unclear, I would employ other canons of statutory construction that have been countenanced by the Supreme Court and the Fifth Circuit. If appropriate, I would also consider secondary sources, including non-binding cases from other jurisdictions, learned treatises, and law review articles, as well as legislative history "only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

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

Response: In deciding a case that turned on the interpretation of a constitutional provision, I would faithfully follow Supreme Court and Fifth Circuit precedent. In the unlikely event that I was interpreting a constitutional provision for the first time, I would analyze the text of the provision and follow the interpretive methods countenanced by the Supreme Court. For instance, in Second Amendment cases, the Court has held that "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis removed). Where appropriate, I would also consider closely analogous cases and non-binding authority from other jurisdictions.

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

Response: The meaning of the Constitution is generally fixed according to the common understanding of the text at the time of enactment. *See New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) (holding that the Constitution has a fixed meaning according to the understandings of those who ratified it, although it can and must apply to circumstances beyond those the Founders specifically anticipated).

**5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: A judge should apply statutes as written. The Supreme Court has held that “when the meaning of the statute’s terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration.” *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020).

**a. Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: *Bostock v. Clayton Cnty.* speaks to this very question:

This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President. If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people’s representatives. And we would deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations.

140 S. Ct. 1731, 1738 (2020).

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

Response: The “irreducible constitutional minimum of standing” contains three elements: the plaintiff must have suffered an “injury in fact,” there must be a causal connection between the injury and the conduct complained of, and it must be likely that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

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

Response: Congressional powers are limited to those enumerated in the Constitution. Included in those powers, under Article I, Section 8, is Congress's authority to make all laws "necessary and proper" for executing its powers. This "necessarily implies the grant of all usual and suitable means for the execution of the powers granted." *McCulloch v. Maryland*, 17 U.S. 316, 324 (1819).

8. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: The constitutionality of a statute "does not depend on recitals of the power it undertakes to exercise." *Nat'l Fed. Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). I would evaluate the statute's constitutionality by closely analyzing the facts before the court, any Supreme Court and Fifth Circuit precedent, the text of the statute, and the arguments of the parties.

9. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: Through substantive due process, the Supreme Court has determined that the Constitution protects certain unenumerated, yet fundamental rights. Those rights include, for instance, the right to marry someone of a different race, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to have offspring, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); the liberty of parents and guardians to direct the upbringing and education of children under their control, *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); the right to engage in intimate conduct, *Lawrence v. Texas*, 539 U.S. 558 (2003); the right to a marital zone of privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

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

Response: The determination of what rights are protected under substantive due process has two features. First, courts will consider whether the claimed right is "objectively, deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (quotations omitted). Second, courts will assess whether the asserted interest has been carefully described. *Id.* at 721. Please also see my response to Question 9.

11. **If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?**

Response: Under Supreme Court precedent, substantive due process does not protect a right to an abortion. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). Nor does substantive due process protect the rights at stake in *Lochner*. *Id.* at 2248; *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). If confirmed as a district court judge, I will be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment.

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

Response: Congress can regulate three broad categories of activity under the Commerce Clause: "the use of the channels of interstate commerce," "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and "activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558 (1995). In assessing the scope of Congress's authority, courts should undertake the "modest" task of assessing whether a rational basis exists for concluding that the congressional action substantially affects interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 22 (2005).

**13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?**

Response: A suspect class is a group that possesses an "immutable characteristic determined solely by the accident of birth, . . . saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (internal quotations and citations omitted). The Supreme Court has found suspect distinctions to include race, religion, alienage, and nationality. *See New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Oyama v. California*, 332 U.S. 633, 646 (1948).

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

Response: Justice Thomas's Concurrence in *Perez v. Mortgage Bankers Ass'n* explained: "To the Framers, the separation of powers and checks and balances were more than just theories. They were practical and real protections for individual liberty in the new Constitution. The Judiciary—no less than the other two branches—has an obligation to guard against deviations from those principles." 575 U.S. 92, 118–19 (2015) (internal citations omitted).

**15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?**

Response: In a case involving the delegation of powers among the branches of government, as with any case, I would closely review the facts, study the arguments carefully and with an open mind, and fairly and dispassionately follow Supreme

Court and Fifth Circuit precedent. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (limiting the President's power to acts authorized by Congress or the Constitution).

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

Response: A judge's role is to consider all facts properly placed into the record and fairly and even-handedly apply the law as the judge finds it. As Justice Frankfurter explained, "The judicial process demands that a judge move within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case." *See Pub. Utilities Comm'n of D.C. v. Pollak*, 343 U.S. 451, 466 (1952) (Frankfurter, J., concurring). If confirmed, I will closely follow Canon 3 of the Code of Conduct for U.S. Judges, which requires me to apply the law objectively, and in doing so set aside any bias or personal feelings I may have in the performance of my duties.

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

Response: I do not have a personal view on whether it's worse to invalidate a constitutional law or validate an unconstitutional law. Both are equally unadvisable, and I would do my level best to avoid both outcomes.

**18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?**

Response: I have not studied this trend, and it would be inappropriate for me to speculate on what accounts for it. The frequency with which the Supreme Court invalidates federal statutes will have no bearing on my own approach, if I'm confirmed, to assessing the constitutionality of a federal statute. That approach, which would be consistent and predictable, would involve closely analyzing the law and facts, studying the arguments carefully and with an open mind, and fairly and dispassionately applying the relevant law and binding precedent.

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

Response: Judicial review refers to the federal judiciary's authority to invalidate laws that violate the Constitution. *See Marbury v. Madison*, 5 U.S. 137 (1803). *See also* Black's Law Dictionary (11th ed. 2019) (defining judicial review *inter alia* as "[a] court's power to review the actions of other branches or levels of government"). Judicial supremacy is "[t]he doctrine that interpretations of the Constitution by the

federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states.” Black’s Law Dictionary (11th ed. 2019).

20. **Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that “If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.” How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?**

Response: Legislators, executive branch officials, and judicial officers all take an oath to abide by the Constitution. Const. art. VI. While it would be inappropriate for me to express any personal beliefs on the approach that elected officials should follow in carrying out their constitutional oath, the “principle that the federal judiciary is supreme in the exposition of the law of the Constitution” remains a “permanent and indispensable feature of our constitutional system.” *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

21. **In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that’s important to keep in mind when judging.**

Response: The role of the judicial branch is to apply the law as it stands, faithfully and impartially, to cases and controversies before the court. *See* U.S. Const. art. III. Judges don’t make or execute laws. If confirmed, I will adjudge cases with humility, understanding the limitations of my role and placing the law and the facts above any personal preferences I may have.

22. **As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: To my understanding, this question poses two hypothetical scenarios. In the first, a higher court decision is not rooted in constitutional text, history, or tradition and has questionable constitutional underpinnings that conflict with my own beliefs about the wisdom or constitutionality of that decision. In such an instance, my own views are of no moment. I will be bound to follow Supreme Court and Fifth Circuit precedent. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) (“[A] precedent of



this Court must be followed by the lower federal courts[.]”). In the second scenario, binding precedent from the Supreme Court or the Fifth Circuit does not speak directly to an issue at hand. Under those circumstances, I would follow my standard approach of closely analyzing the law and facts, studying the arguments carefully and with an open mind, and fairly and dispassionately applying the relevant law and binding precedent. Where appropriate and necessary to resolve an issue, I would undergo a textual analysis of the constitutional provision, statute, or regulation, seek to analogize binding precedent to the facts at hand, and consult non-binding case law and approved secondary sources.

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

Response: None. Judges are required to “administer justice without respect to persons, and do equal right to the poor and to the rich.” 28 U.S.C. § 453.

24. **The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition? If not, how would you define equity?**

Response: I am not familiar with the Biden Administration’s definition of “equity.” The Oxford-English dictionary (online) defines “equity” as “[t]he quality of being equal or fair; fairness, impartiality; even-handed dealing.”

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

Response: Equity is fairness. Equality is the condition of being equal. *See* Oxford-English Dictionary (online).

26. **Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?**

Response: The Equal Protection Clause bars any state from denying “to any person within its jurisdiction the equal protection of the laws.” It does not specifically mention “equity.” I am not aware of any Supreme Court or Fifth Circuit case wherein the definition of equity from question 24 has been read into the Equal Protection Clause.

27. **How do you define “systemic racism?”**

Response: I do not have a personal definition of “systemic racism,” although I understand that people have different views on what the term means. Black’s Law Dictionary (11th ed. 2019) defines “systemic discrimination” as “[a]n ingrained culture that perpetuates discriminatory policies and attitudes toward certain classes of people within society or a particular industry, profession, company, or geographic location.”

**28. How do you define “critical race theory?”**

Response: I do not have a personal definition of “critical race theory,” although I understand that people have different views on what the term means. Black’s Law Dictionary (11th ed. 2019) defines “critical race theory” as “[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities.”

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

Response: Please see my responses to questions 27 and 28.

**30. You served as Acting Chief of Staff to FBI Director Christopher Wray from December 2020 to January 2021, a time period which captures the events that took place at the capitol on January 6<sup>th</sup>. What were your responsibilities during that time and what internal communications took place on January 6<sup>th</sup>?**

Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the response below.

As the Acting Chief of Staff from December 2020 to January 2021, my responsibilities were not dissimilar from my responsibilities throughout my FBI detail from February 2020 to July 2021, where I otherwise served as the Deputy Chief of Staff. In those roles, I supported the Director’s Office on various policy, public affairs, and administrative matters. By way of example, I assisted with the preparation of many of the Director’s public statements and internal communications, advised on media appearances and congressional engagements, worked with the Department of Justice on policy matters affecting the FBI, and helped oversee components of the Director’s Office staff. I did not have oversight or decision-making authority over investigations, I did not personally participate in any investigations, and I was outside of what I would call the “operational chain of command.” At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases, investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of

Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director's staff are thus outside of the operational chain of command.

Accordingly, as the Deputy and Acting Chief of Staff at the FBI, I had no role in preparing for the events at the U.S. Capitol on January 6. I did not have decision-making authority regarding the deployment of FBI resources to address the violence and destruction of property on January 6. And I have not personally participated in the subsequent investigations of illegal conduct on January 6.

The FBI employs some 38,000 personnel around the world, including agents, analysts, and support staff. I cannot speak to all of the communications that occurred on January 6, 2021. Moreover, as has been publicly reported, the DOJ Office of Inspector General (OIG) has initiated a review to examine the role and activity of the FBI and other DOJ components in preparing for and responding to the events at the U.S. Capitol on January 6. To my knowledge, that review is ongoing. While I do not have personal knowledge of the scope of that review, I imagine it includes a review of the FBI's internal communications on January 6. As a Department of Justice employee subject to the Justice Manual, Sections 1-7.001 et seq., it would be inappropriate for me to comment on areas that are under OIG review.

SENATOR TED CRUZ  
U.S. Senate Committee on the Judiciary

**Questions for the Record for Brandon Scott Long, nominated to be United States District Judge for Eastern District of Louisiana**

**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 wrong, and it's illegal. The United States Supreme Court has held that "the central purpose of the Fourteenth Amendment was to eliminate racial discrimination." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2161 (2023), quoting *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964). Moreover, Congress has passed laws prohibiting racial discrimination, including Title VI and Title VII of the Civil Rights Act of 1964.

### 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: Substantive-due-process analysis has two features. First, courts will consider whether the claimed right is "objectively, deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (quotations omitted). Second, courts will assess whether the asserted interest has been carefully described. *Id.* at 721. Any personal beliefs of judges must be set aside so as to avoid the Due Process Clause from becoming "subtly transformed into the policy preferences" of members of the court. *Id.* at 720. If confirmed, I will faithfully apply the *Glucksberg* test and any other applicable Supreme Court and Fifth Circuit precedent to any case involving a right unenumerated in the Constitution.

### 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 begins with assiduously following the laws passed by Congress, precedent in the Supreme Court and the Fifth Circuit Court of Appeals, and the Constitution to which I've sworn an oath. I will work hard to have command of the relevant areas of law each time I walk into court or render a decision. I will listen carefully to the testimony and arguments of the parties and keep an open mind throughout the proceedings. I will be respectful of all litigants, witnesses, courtroom staff, and juries, and set a tone of decorum in the courtroom. And I will remain humble, understanding the limitations of my role and placing the law and the facts above any personal preferences I may have.

The work of a district court judge is very different from the work of a Supreme Court Justice, and I have not closely analyzed the judicial philosophies in the Warren, Burger, Rehnquist, and Roberts Courts to determine which Justice's philosophy is most analogous to my own.

### 4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an "originalist"?

Response: Originalism refers to the interpretive method whereby "words of a legal instrument are to be given the meanings they had when they were adopted." Black's Law

Dictionary (11th ed. 2019). The Supreme Court has taken an originalist approach in interpreting certain constitutional provisions. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a district court judge, I will follow all Supreme Court and Fifth Circuit precedent concerning 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: Living constitutionalism 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 am not aware of any case where the Supreme Court has directed lower courts to use a living constitutionalism method. If confirmed as a district court judge, I will follow all Supreme Court and Fifth Circuit precedent concerning 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: In the unlikely event that I were interpreting a constitutional provision for the first time, I would analyze the text of the provision and follow the interpretive methods countenanced by the Supreme Court. For instance, in Second Amendment cases, the Court has held that “the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation.” *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis removed). Where appropriate, I would also consider closely analogous cases and non-binding authority from other jurisdictions.

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 meaning of the Constitution or a statute is generally fixed according to the common understanding of the text at the time of enactment. *See New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) (holding that the Constitution has a fixed meaning according to the understandings of those who ratified it, although it can and must apply to circumstances beyond those the Founders specifically anticipated); *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020) (“This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.”). In certain limited circumstances, the Supreme Court has looked to contemporary standards when deciding the bounds of constitutional activity. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (noting that Eighth Amendment excessive punishment claims are determined by the standards “that currently prevail”).

8. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: No. The Constitution contains enduring principles that are generally fixed in meaning. *See New York State Rifle & Pistol Ass’n, v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

While the Constitution is intended to apply to modern circumstances, *id.*, the mechanism for changing the Constitution is the Article V amendment process.

9. **Is the Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization* settled law?**

Response: A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2(A), Code of Conduct for United States Judges (2019). The *Dobbs* case is Supreme Court precedent. If confirmed, I would be duty-bound to follow all Supreme Court decisions, including *Dobbs*. See *Hutto v. Davis*, 454 U.S. 370, 375 (1982) (“[A] precedent of this Court must be followed by the lower federal courts[.]”).

a. **Was it correctly decided?**

Response: As a district court judge, I would be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment. Moreover, the canons of judicial conduct preclude me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. Thus, it would be inappropriate for me to comment on whether the decision was correct.

10. **Is the Supreme Court’s ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2(A), Code of Conduct for United States Judges (2019). The *Bruen* case is Supreme Court precedent. If confirmed, I would be duty-bound to follow all Supreme Court decisions, including *Bruen*. See *Hutto v. Davis*, 454 U.S. 370, 375 (1982) (“[A] precedent of this Court must be followed by the lower federal courts[.]”).

a. **Was it correctly decided?**

Response: As a district court judge, I would be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment. Moreover, the canons of judicial conduct preclude me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. Thus, it would be inappropriate for me to comment on whether the decision was correct.

11. **Is the Supreme Court’s ruling in *Brown v. Board of Education* settled law?**

Response: A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2(A), Code of Conduct for United States Judges (2019). The *Brown* case is Supreme Court precedent. If confirmed, I would be duty-bound to follow all Supreme Court decisions, including *Brown*. See *Hutto v. Davis*, 454 U.S. 370, 375 (1982) (“[A] precedent of this Court must be followed by the lower federal courts[.]”).

a. **Was it correctly decided?**

Response: Yes. As a district court judge, I would be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment. Moreover, the Code of Conduct for United States Judges preclude me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. As other nominees have observed, however, the issues in *Brown* involving school desegregation are unlikely to be relitigated in any court. Accordingly, I can express my belief 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 Title 18, United States Code, Section 3142(e)(3), certain types of offenses trigger a presumption favoring pretrial detention. These offenses include, among others, crimes under the Federal Controlled Substances Act with a maximum possible sentence of at least 10 years in prison; certain violent crimes and firearm offenses; and certain crimes against children. 18 U.S.C. § 3142(e)(3)(A)-(E). Moreover, Title 18, United States Code, Section 3142(e)(2), creates a rebuttable presumption favoring detention under certain circumstances where the defendant committed a prior offense while on release pending trial.

a. **What are the policy rationales underlying such a presumption?**

Response: I am aware of no Supreme Court or Fifth Circuit precedent describing the policy rationales for these presumptions. However, by its own language, the presumption in § 3142(e)(3) arises out of the concern that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community.” Similarly, the presumption in § 3142(e)(2) arises out of the concern that “no condition or combination of conditions will reasonably assure the safety of any other person and 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: The Religious Freedom Restoration Act (RFRA) and the First Amendment Free Exercise Clause establish limits as to what the government may impose on, or require of, religious organizations and small businesses with observant owners. For instance, the RFRA provides that “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability [unless the burden] (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C.A. § 2000bb-1 (West). In *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court found that the RFRA protects for-profit, closely held corporations. 573 U.S. 682, 719 (2014).

Similarly, under the Supreme Court’s First Amendment jurisprudence, the government must satisfy the strict scrutiny standard—by demonstrating its course was justified by a



compelling state interest and was narrowly tailored in pursuit of that interest—when its action is not both facially neutral and generally applicable in its burden on religious exercise. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022). Government action is not facially neutral when, for instance, it was motivated by hostility towards religion. *See Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 138 S. Ct. 1719, 1732 (2018). And government action is not generally applicable when it treats comparable secular activity more favorably than religious exercise. *See Tandon v. Newsom*, 141 S. Ct. 1294, 1297 (2021).

14. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: Such discrimination is permitted only when the government action is the least restrictive means of and/or narrowly tailored to achieving a compelling government interest. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022).

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 Cath. Diocese of Brooklyn v. Cuomo*, the Supreme Court enjoined a New York executive order (EO) that imposed COVID-19 restrictions on the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues. 141 S. Ct. 63 (2020). First, the Court determined that the EO was not neutral and of general applicability because it singled out houses of worship for especially harsh treatment. *Id.* Accordingly, under the strict scrutiny standard, the EO was likely to fail because the state could have adopted less restrictive rules to minimize the risk of COVID-19 exposure. *Id.* at 67. The Court also found that denying people their freedom to worship in person at a religious service would cause irreparable harm, and that the state failed to show that less restrictive rules would imperil public health. *Id.* at 67-68.

16. **Please explain the U.S. Supreme Court’s holding and rationale in *Tandon v. Newsom*.**

Response: In *Tandon v. Newsom*, the Supreme Court enjoined California’s COVID-19 restrictions, holding that restrictions on at-home religious services were not neutral and generally applicable because they treated comparable secular activity more favorably than religious exercise. 141 S. Ct. 1294, 1297 (2021). The Court determined that, under the strict scrutiny standard, the injunction applicants would likely succeed on the merits of their claim, in part because the state did not “explain why it could not safely permit at-home worshippers to gather in larger numbers while using precautions used in secular activities.” *Id.* The Court also found that the applicants would be irreparably harmed by the loss of free exercise rights, and that California had not shown that public health would

be imperiled by employing less restrictive measures. *Id.*

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

Response: Yes. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2429-30 (2022).

18. **Explain your understanding 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 violated the free exercise rights of a baker who refused to bake a wedding cake for a same-sex couple. 138 S. Ct. 1719, 1724 (2018). The Court noted the “difficult questions as to the proper reconciliation of at least two principles,” *id.* at 1723: on the one hand, “gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth,” *id.* at 1727, while on the other hand, the baker “was entitled to the neutral and respectful consideration of his [First Amendment] claims.” *Id.* at 1729. The Court pointed to statements made by members of the Commission during public hearings showing intolerance towards the baker’s religious beliefs. *Id.* at 1731. This hostility “was inconsistent with the First Amendment’s guarantee that our laws be applied in a manner that is neutral toward religion.” *Id.* at 1732. Accordingly, the Court invalidated the ruling of the Commission. *Id.*

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 rejected the “notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization.” *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 834 (1989). “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). What matters is whether the individual maintains an “honest conviction” in his/her religious observance. *Id.* at 716. *See also Frazee*, 489 U.S. at 834 (affording the petitioner First Amendment protections based on a “sincerely held religious belief”).

- a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: The Supreme Court has rejected the “notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization.” *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 834 (1989). “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). What matters is whether the individual maintains an “honest conviction” in his/her religious observance. *Id.* at 716. *See also Frazee*, 489 U.S. at 834 (affording the petitioner First

Amendment protections based on a “sincerely held religious belief”).

- b. **Can courts decide that anything could constitute an acceptable “view” or “interpretation” of religious and/or church doctrine?**

Response: The Supreme Court has rejected the “notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization.” *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 834 (1989). “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). What matters is whether the individual maintains an “honest conviction” in his/her religious observance. *Id.* at 716. *See also Frazee*, 489 U.S. at 834 (affording the petitioner First Amendment protections based on a “sincerely held religious belief”).

- c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: No.

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 an earlier case, *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, the Supreme Court held that the First Amendment barred a court from entertaining an employment discrimination claim brought by an elementary school teacher against the religious school where she taught. 565 U.S. 171, 181 (2012). That decision involved the “ministerial exception” to laws governing the employment relationship between a religious institution and, in that instance, a religion teacher with formal religious training who assumed the title of “Minister of Religion, Commissioned.” *Id.* at 190-92. In *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, the Court extended the “ministerial exception” to other teachers who “performed vital religious duties,” such as providing instruction about the Catholic faith, guiding their students in faith, and praying and attending mass with students. 140 S. Ct. 2049, 2066 (2020). “When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, 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.* at 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 Philadelphia violated the free exercise rights of Catholic Social Services (CSS) when it stopped referring foster children to the agency after CSS, on religious grounds, refused to certify same-sex couples as foster parents. 141 S. Ct. 1868, 1882 (2021). The Court began with the premise that laws incidentally burdening religion are typically not subject to strict scrutiny under the First Amendment so long as they are neutral and generally applicable. *Id.* at 1876. A law is not generally applicable if it “invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions.” *Id.* at 1877 (quotations omitted). In *Fulton*, because Philadelphia’s foster care procurement program involved a system of individualized exemptions, and the city offered no compelling reason for denying CSS an exemption, the program was not generally applicable and the strict scrutiny standard applied. *Id.* at 1878-82. Under that standard, the city’s three stated interests—maximizing the number of foster parents, protecting the City from liability, and ensuring equal treatment of prospective foster parents and foster children—were insufficient to justify the First Amendment infringement of CSS’s rights. *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: In *Carson v. Makin*, the Supreme Court held that Maine’s exclusion of “nonsectarian” schools from its tuition assistance program violated the Free Exercise Clause of the First Amendment. 142 S.Ct. 1987, 2002 (2022). Under the program, Maine paid tuition for certain students at private schools so long as the schools were not religious. *Id.* at 1998. The Court found this program discriminated against religion, noting that the “State’s antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise.” *Id.*

23. **Please explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: The case of *Kennedy v. Bremerton Sch. Dist.* involved whether the Bremerton School District (District) violated the First Amendment’s Free Speech and Free Exercise Clauses when it reprimanded a high school football coach for engaging in a short, quiet prayer at midfield after football games. 142 S. Ct. 2407 (2022). The Court determined that the District’s conduct was neither neutral nor generally applicable, triggering a free-exercise violation. *Id.* at 2422-23. The Court also determined that that the coach’s prayers were private, not government, speech, and thus protected under the Free Speech Clause. *Id.* at 2423-25. In discussing the tension between the Free Speech, Free Exercise, and Establishment Clauses of the First Amendment, the Court found the coach’s “private religious exercise did not come close to crossing any line one might imagine separating protected private expression from impermissible government coercion.” *Id.* at 2429. Under strict scrutiny analysis, the District overstepped based on its “mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech.” *Id.* at 2433. According to the Court, the Constitution does not mandate or

tolerate that kind of discrimination. *Id.*

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 Cnty.*, the Supreme Court vacated a decision by Minnesota courts requiring an Amish community to comply with a county ordinance requiring the installation of modern septic systems, over the Amish's religious objections. 141 S. Ct. 2430 (2021). In his concurrence, Justice Gorsuch concluded that the county and the lower courts misinterpreted the demands of the Religious Land Use and Institutionalized Persons Act (RLUIPA). *Id.* at 2432. The RLUIPA calls for strict scrutiny of land use regulations that substantially burden religious exercise, requiring the government to show that its regulations are narrowly tailored to serve a compelling governmental interest. *Id.* Justice Gorsuch explained that the question is not whether the county has a compelling interest in enforcing its septic system requirement generally, but whether it has an interest in denying an exception to the requirement for the Amish specifically. *Id.* Justice Gorsuch also determined that the county and the courts failed to give due weight to the exemptions that other groups enjoy. *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: Title 18, United States Code, Section 1507 makes it a crime, punishable by up to one year in prison, to picket or parade in front of the homes of United States judges with intent to interfere with, obstruct, or impede the administration of justice, or to influence any judge in the discharge of his/her duty, among other offenses. If confirmed as a judge, my role would be to apply this and other laws fairly and neutrally to the facts of any case before me. If a question was raised as to the statute's constitutionality, I would assess the matter based on the facts before the court, any Supreme Court and Fifth Circuit precedent, the text of the statute, and the arguments of the parties.

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: Yes.

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: Under Article II, Section 2, of the Constitution, the President makes political appointments with advice and consent of the Senate. As a judicial nominee, it would be inappropriate for me to opine on these types of political decisions. If confirmed as a district court judge and a matter involving the constitutionality of an appointment came before me, I would faithfully apply all applicable laws and binding Supreme Court and Fifth Circuit precedent to the facts of the case.

30. **If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?**

Response: I am not aware of any Supreme Court or Fifth Circuit decision establishing that a program or policy with a racially disparate outcome is *per se* evidence of purposeful or subconscious racial discrimination. If such an issue came before me as a district court judge, I would closely review the facts of the case, study the arguments carefully and with an open mind, and fairly and dispassionately apply the relevant law

and binding precedent.

31. **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 question for policymakers to consider. If confirmed as a district court judge, I will follow all Supreme Court precedent regardless of the size of the Court.

32. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No. Each of the Justices was nominated by the President and confirmed by the Senate, as required under Article II, Section 2, of the Constitution.

33. **What do you understand to be the original public meaning of the Second Amendment?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022), the Supreme Court held that the original public meaning of the Second Amendment protected an individual’s right to possess a handgun in the home and to carry a handgun outside the home for self-defense.

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 the *Bruen* case, the Supreme Court held that when the Second Amendment’s text covers an individual’s conduct, the Constitution “presumptively protects that conduct.” 142 S.Ct. 2111, 2129-30 (2022). The government must then justify any restriction on the Second Amendment’s “unqualified command” by demonstrating that the restriction is consistent with the Nation’s historical tradition of firearm regulation. *Id.* at 2130. The Court explained that “analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.” *Id.* at 2133.

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

Response: Yes. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York State Rifle & Pistol Ass’n, Inc. 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: “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.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (*McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)). I am not aware of any Supreme Court or Fifth Circuit precedent subordinating Second Amendment rights to 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 not aware of any Supreme Court or Fifth Circuit precedent subordinating Second Amendment rights to other individual rights enumerated in the Constitution.

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

Response: Decisions on whether and how to enforce a law are vested in the executive branch of government under Article II of the Constitution. The executive branch has “broad discretion” on whom to prosecute. *Wayte v. United States*, 470 U.S. 598, 607 (1985). “[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978). As a judicial nominee who, if confirmed, will undoubtedly be handling criminal matters, it would be inappropriate for me to opine on questions involving prosecutorial discretion.

39. **Explain your understanding of what distinguishes an act of mere ‘prosecutorial discretion’ from that of a substantive administrative rule change.**

Response: In a criminal law context, an act of prosecutorial discretion involves a decision whether and how to enforce a criminal statute. Black’s Law Dictionary (11th ed. 2019) 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.” A substantive administrative rule change involves a decision by an administrative agency to change a substantive rule. A rule change must be consistent with binding precedent and statutory law, including the Administrative Procedure Act.

40. **Does the President have the authority to abolish the death penalty?**

Response: No. Congress authorized capital punishment for certain criminal offenses. See 18 U.S.C. § 3591. The President does not have the authority to unilaterally abolish a statute.

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 Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, the Supreme Court lifted the stay on a district court judgment that the Centers for Disease Control and Prevention (CDC) exceeded its regulatory authority in imposing a nationwide moratorium on evictions of certain tenants based on COVID-19 concerns. 141 S. Ct. 2485 (2021). The Court found that the applicants—realtor associations and rental property managers who sued to enjoin the moratorium—were likely to succeed on the merits of their case, given that Congress did not clearly authorize the expansive authority claimed by the CDC. *Id.* at 2488-89. Moreover, the applicants were at risk of irreparable harm after being denied rent payments with no guarantee of eventual recovery, *id.* at 2489, and the balance of equities favored vacating the stay. *Id.* at 2490.

42. **Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?**

Response: For Department of Justice employees, the guidelines covering confidentiality and media engagements are found in the Justice Manual, Sections 1-7.001 et seq. Section 1-7.400(B) contains restrictions on the Department's disclosure of information before criminal charges are publicly filed. As a judicial nominee, it would be inappropriate for me to discuss a hypothetical issue that could get raised during litigation. If confirmed, and if a case involving this issue arises, I would closely review the facts of the case, study the arguments carefully and with an open mind, and fairly and dispassionately apply the relevant law and binding precedent.

43. **In your questionnaire and again during your testimony you indicated that you served as Deputy and Acting Chief of Staff for FBI Director Wray. In this capacity, you noted that you, "worked primarily on policy, public affairs, and administrative matters."**

Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the responses below.

- a. **What policy matters did you work on that affected the Federal Bureau of Investigation? Be as specific and detailed as possible.**

Response: From February 2020 to July 2021, I was on "detail" from the U.S. Attorney's Office in New Orleans to the FBI in Washington, DC. While serving in that capacity, I worked on policy matters affecting the FBI. For example, I worked closely with attorneys from the Department of Justice and FBI personnel on announcing reforms designed to strengthen the FBI's compliance, oversight, and

accountability with respect to certain foreign intelligence activities. I also worked with Department of Justice attorneys and FBI personnel on a policy establishing the FBI's Internal Auditing Office, the goal of which was to enhance the FBI's compliance with guidelines, statutes, policies, and procedures governing its national security activities. These policy reforms were memorialized in separate memoranda issued by Attorney General William P. Barr in August 2020. I did not keep a record of all the policy matters on which I worked, however the ones noted here are illustrative.

**b. What notable public statements did you prepare? Be as thorough as possible.**

Response: The FBI's Office of Public Affairs (OPA) was responsible for generating and issuing public statements on behalf of the FBI. During my detail at the FBI, I would occasionally review and make comments to draft public statements before they were submitted to the Chief of Staff or the FBI Director for their review and approval. In addition, OPA's Executive Writing Unit was responsible for drafting speeches, talking points, email messages, and other communications for the Director to deliver to the FBI workforce and externally in public forums. I would frequently review drafts of such communications before they were given to the Chief of Staff or the FBI Director for their review and approval. I did not keep a record of which statements I reviewed. However, examples that I recall include the Director's remarks after the death of George Floyd, remarks to the International Association of Police Chiefs, messages to the FBI workforce regarding COVID-19, messages to the FBI workforce surrounding major public holidays, and remarks given by the FBI Director at the funerals of Special Agents Laura Schwartzenberger and Daniel Alfin, who were shot and killed while executing a search warrant on a child pornography suspect in February 2021.

**c. As Acting Chief of Staff, did you accompany Director Wray on briefings and trips?**

Response: As the Acting Chief of Staff in December 2020 and January 2021, I attended briefings alongside the FBI Director. I do not recall accompanying the FBI Director on any trips outside of the Washington, DC area during that time.

**d. As then-Acting Chief of Staff, were you aware of the FD-1023 outlining potential bribery allegations against President Biden?**

Response: I have not seen and was not aware of any such FD-1023 during my detail at the FBI. Outside of the recent media coverage, I am not familiar with that report. By way of background, as the Deputy and Acting Chief of Staff, I did not have oversight or decision-making authority over investigations, I did not personally participate in any investigations, and I was outside of what I would call the "operational chain of command." At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases,

investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director’s staff are thus outside of the operational chain of command.

- e. **Was the FBI in possession of the report and or the recordings on the Biden family bribery allegations during your tenure?**

Response: I have not seen and was not aware of any such report or recordings during my detail at the FBI, nor can I confirm or deny their existence. Outside of the recent media coverage, I am not familiar with these materials.

- f. **Have you listened to the seventeen voice recordings between the Burisma informant and the Biden family, or are you otherwise familiar with their contents?**

Response: I have not listened to and was not aware of any such recordings during my detail at the FBI, nor can I confirm or deny their existence. Outside of the recent media coverage, I am not familiar with these materials.

44. **On October 19, 2020, just weeks before the 2020 Presidential Election, fifty one former top intelligence officials signed a letter saying that the contents of Hunter Biden’s laptop—which was in the FBI’s possession for almost a year by that point—had “all the classic earmarks of a Russian information operation.” Whistleblowers have subsequently confirmed the FBI had verified the laptop’s contents as genuine as far back as 2019.**

- a. **Given that the FBI knew that these fifty one intelligence officials were not being truthful regarding laptop’s authenticity, why did the FBI choose to remain silent about the authenticity of the Hunter Biden’s laptop in its October 20, 2020 letter on the matter?**

Response: I do not recall reviewing an October 20, 2020, letter while I was working for the FBI. In preparing this response, I found the letter online and have now reviewed it, but I have no recollection of seeing the letter at the time it was drafted or discussing the contents of the letter with any FBI personnel. I was not involved in any aspect of the referenced investigation, and I cannot otherwise speak to what the FBI chose to say or not say in the October 20, 2020, letter, and why. Moreover, as a Department of Justice employee subject to the Justice Manual, Sections 1-7.001 et seq., as well as a judicial nominee subject to the Code of Conduct for U.S. Judges, specifically Canon 3(A)(6) prohibiting public comment on a pending matter and Canon 2(A) requiring judges to avoid the appearance of having prejudged any possible related matters, it would be inappropriate for me to comment on an open investigation.

- b. **Were you involved in any decision making process regarding either the Hunter Biden laptop investigation or the decision to not verify the laptop's authenticity prior to the 2020 election?**

Response: I was not involved in decision-making relating to Hunter Biden's laptop or any related investigations.

- c. **Did you participate in *any* meetings regarding the Hunter Biden laptop?**

Response: I do not recall participating in any meetings regarding the Hunter Biden laptop.

45. **During your July 12, 2023 confirmation hearing, you were unwilling to say whether a January 2023 FBI memo detailing efforts to infiltrate and develop sources within traditional Catholic churches was appropriate. You refused to denounce these efforts even when the Attorney General himself called the memo "appalling" and "inappropriate."**

- a. **Was the Attorney General incorrect when he referred to the January 2023 memo as "appalling" and "inappropriate"?**

Response: During my time as a detailee to the FBI from February 2020 through July 2021, I was not aware of any discussions, proposals, or communications related to the FBI infiltrating and developing sources within Catholic churches. My understanding is that the Richmond memo, which to my knowledge I have never seen, was authored in January 2023, over a year and a half after I left the FBI. According to media reports, the memo originated from the FBI's Richmond field office. As a member of the FBI Director's staff, I never visited the Richmond field office and have no recollection of working with anyone in Richmond.

Since completing my FBI detail in July 2021, I have been serving as a line Assistant U.S. Attorney in New Orleans, where I have never been asked to work on a case involving the Catholic Church. (As an aside, I am a Catholic.) At the time of my confirmation hearing, I had only a cursory understanding of the media coverage surrounding the January 2023 FBI memo. Having now reviewed the coverage more closely, I would agree with the assessment of the Attorney General that the report was "appalling" and "inappropriate." I would also agree with the assessment of the FBI Director, who said that he was "aghast" when the memo came to his attention and ordered that the memo be withdrawn.

As a general matter, as a judicial nominee and consistent with Canon 3(A) of the Code of Conduct for U.S. Judges, I cannot comment on a matter that could come before me, as that would be seen as prejudging an issue. However, I am willing to comment on this matter because the memo has been withdrawn and denounced by the Attorney General and FBI Director. That suggests litigation around the memo is not likely to come before me.

- b. **Do you believe that targeting people a specific religious faith for criminal investigation is consistent with equal justice under the law?**

Response: No.

- c. **Is it consistent with the First Amendment?**

Response: No.

**Senator John Kennedy  
Questions for the Record**

**Mr. Brandon Long**

- 1. Please describe your roles as Deputy Chief of Staff and Acting Chief of Staff to Director Christopher Wray at the Federal Bureau of Investigation (“FBI” or “Bureau”) from 2020 to 2021.**

Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the responses below.

From February 2020 to July 2021, I was on “detail” from the U.S. Attorney’s Office in New Orleans to the FBI in Washington, DC. As Deputy Chief of Staff and Acting Chief of Staff to the FBI Director, I supported the Director’s Office on various policy, public affairs, and administrative matters. By way of example, I assisted with the preparation of many of the Director’s public statements and internal communications, advised on media appearances and congressional engagements, worked with the Department of Justice on policy matters affecting the FBI, and helped oversee components of the Director’s Office staff. In these roles, I did not have oversight or decision-making authority over investigations, I did not personally participate in any investigations, and I was outside of what I would call the “operational chain of command.” At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases, investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director’s staff are thus outside of the operational chain of command.

- a. Were you in the operational chain of command or did you exercise decisional authority on behalf of the Bureau leading up to the January 6, 2021 attack on the U.S. Capitol, during the attack, or in the Bureau’s response?**

Response: No.

- b. Were you in the operational chain of command or did you exercise decisional authority in any investigation involving Hunter Biden?**

Response: No.

- c. Were you in the operational chain of command or did you exercise decisional authority regarding U.S. Attorney David Weiss’ alleged request for special**

**counsel status as IRS whistleblowers claim in connection with the Hunter Biden federal tax investigation?**

Response: No.

- d. Were you in the operational chain of command or did you exercise decisional authority related to “threat tagging” of parents at local school board meetings across the country as potential domestic terrorists?**

Response: No. I am not aware of that practice at the FBI.

- e. In relation to the above question, do you believe parents peacefully expressing concerns about their child’s education at local school board meetings should be labeled or investigated as ‘domestic terrorists’?**

Response: No. The peaceful expression of one’s beliefs is protected under the First Amendment.

- f. Were you in the operational chain of command or did you exercise decisional authority regarding any Bureau investigation into pro-life organizations in connection with domestic terrorism?**

Response: No.

- g. In your hearing, a senator asked about your awareness of a memo authored by an FBI field office regarding the targeting of Catholic churches in an effort to uncover domestic extremism, despite the fact that you were no longer with the FBI when the field office issued it. Did you have any knowledge of or involvement with the preparation of this memo prior to your departure from the Bureau?**

Response: No. During my time as a detailee to the FBI from February 2020 through July 2021, I was not aware of any discussions, proposals and/or communications related to the FBI targeting Catholic churches. My understanding is that the Richmond memo, which to my knowledge I have never seen, was authored in January 2023, over a year and a half after I left the FBI. According to media reports, the memo originated from the FBI’s Richmond field office. As a member of the FBI Director’s staff, I never visited the Richmond field office and have no recollection of working with anyone in Richmond.

- h. The Bureau subsequently retracted the memo detailed in the question above. Do you agree with this decision?**

Response: Yes. Since completing my FBI detail in July 2021, I have been serving as a line Assistant U.S. Attorney in New Orleans, where I have never been asked to work on a case involving the Catholic Church. (As an aside, I am a Catholic.) At the time of my confirmation hearing, I had only a cursory understanding of the

media coverage surrounding the January 2023 FBI memo. Having now reviewed the coverage more closely, I would agree with the assessment of the Attorney General that the report was “appalling” and “inappropriate.” I would also agree with the assessment of the FBI Director, who said that he was “aghast” when the memo came to his attention and ordered that the memo be withdrawn.

As a general matter, as a judicial nominee and consistent with Canon 3(A) of the Code of Conduct for U.S. Judges, I cannot comment on a matter that could come before me, as that would be seen as prejudging an issue. However, I am willing to comment on this matter because the memo has been withdrawn and denounced by the Attorney General and FBI Director. That suggests litigation around the memo is not likely to come before me.

- i. In relation to question 1(h), do you believe the FBI suffers from anti-Catholic bias?**

Response: No.

- j. In relation to question 1(h), is targeting a group of people based solely on their religion an appropriate tactic by a federal law enforcement agency?**

Response: No.

- k. Have you been contacted by investigators in the House or Senate probing allegations of misconduct at the FBI?**

Response: No.

- l. Have you participated in any congressional investigation probing allegations of misconduct at the FBI as witness or otherwise?**

Response: No.

- 2. Please describe your judicial philosophy. Be as specific as possible.**

Response: My judicial philosophy begins with assiduously following the laws passed by Congress, precedent in the Supreme Court and the Fifth Circuit Court of Appeals, and the Constitution to which I’ve sworn an oath. I will work hard to have command of the relevant areas of law each time I walk into court or render a decision. I will listen carefully to the testimony and arguments of the parties and keep an open mind throughout the proceedings. I will be respectful of all litigants, witnesses, courtroom staff, and juries, and set a tone of decorum in the courtroom. And I will remain humble, understanding the limitations of my role and placing the law and the facts above any personal preferences I may have.

- 3. Do you believe the meaning of the Constitution is immutable or does it evolve over time?**



Response: The meaning of the Constitution is fixed according to the understanding of those who ratified it. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). However, “the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *Id.* Article V of the Constitution sets forth the process for amending the Constitution.

**4. Please describe how you would determine the meaning of an ambiguous term or phrase in a statute or other legal document.**

Response: I would begin by closely reviewing any Supreme Court or Fifth Circuit precedent. If precedent exists, I would follow precedent. If not, I would seek to ascertain the plain meaning of the statute, focusing on the “ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1739 (2020). If the statute was still unclear, I would employ other canons of statutory construction that have been countenanced by the Supreme Court and the Fifth Circuit. If appropriate, I would also consider secondary sources, including non-binding cases from other jurisdictions, learned treatises, and law review articles, as well as legislative history “only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

**5. Should a judge look beyond the text of a law or regulation, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

Response: No. A judge should apply the statute as written. The Supreme Court has held that “when the meaning of the statute’s terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration.” *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020).

**6. Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute or regulation?**

Response: I am not aware of any Supreme Court or Fifth Circuit precedent that would permit a judge to consider statements by a president when interpreting a statute or regulation. More broadly, the Supreme Court has explained that external materials, like legislative history, “have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). Even then, “legislative history is itself often murky, ambiguous, and contradictory.” *Id.*

**7. Is there ever an appropriate circumstance in which a district court judge may ignore or circumvent precedent set by the circuit court within which it sits or the U.S. Supreme Court?**

Response: No. I would be bound to follow Supreme Court and Fifth Circuit precedent. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) (“[A] precedent of this Court must be followed by the lower federal courts[.]”).

- 8. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual’s rights under the Second Amendment in light of the Supreme Court’s opinion in *Bruen*.**

Response: In the *Bruen* case, the Supreme Court held that when the Second Amendment’s text covers an individual’s conduct, the Constitution “presumptively protects that conduct.” 142 S. Ct. 2111, 2129-30 (2022). The government must then justify any restriction on the Second Amendment’s “unqualified command” by demonstrating that the restriction is consistent with the Nation’s historical tradition of firearm regulation. *Id.* at 2130. The Court explained that “analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.” *Id.* at 2133. In striking down New York’s “proper-cause” requirement in *Bruen*, the Court reviewed historical evidence including English history and customs, Colonial-era regulations, and post-ratification restrictions, finding that the state had failed to show an American tradition justifying the requirement. *Id.* at 2138-56. If called upon to decide a Second Amendment case, I will fully and faithfully apply *Bruen*, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), as well as any other governing Supreme Court and Fifth Circuit precedent.

- 9. How does the judicial branch decide when an agency has exercised more authority than Congress delegated or otherwise exceeded its rulemaking powers?**

Response: Under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, a court reviewing an agency’s construction of a statute must evaluate two questions: whether Congress has directly spoken to the precise question at issue, and if not, whether the agency’s action is based on a permissible construction of the statute. 467 U.S. 837, 843 (1984). “If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation,” so long as the regulation is not “arbitrary, capricious, or manifestly contrary to the statute.” *Id.* at 843-44. In certain “extraordinary cases” of economic and political significance, an agency must provide “something more than a merely plausible textual basis for the agency action” and instead “point to clear congressional authorization for the power it claims.” *West Virginia v. EPA*, 142 S. Ct. 2587, 2608-09 (2022) (quotations omitted); *see also Biden v. Nebraska*, 143 S. Ct. 2355, 2375 (2023).

- 10. In *Gundy v. United States*, 588 U.S. \_\_\_\_ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?**

Response: Congress may not transfer to another branch “powers which are strictly and exclusively legislative.” *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 42–43, 6 L.Ed. 253 (1825)). However, “a statutory delegation is constitutional as long as Congress lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform.” *Gundy*, 139 S. Ct. at 2123 (internal quotations and citation omitted). In *Gundy*, a plurality of the Court determined that Congress did not violate the nondelegation doctrine when it instructed the Attorney General to apply a section of the Sex Offender Registration and Notification Act to pre-Act offenders as soon as feasible. 139 S. Ct. 2116, 2129 (2019). If confirmed, I am bound to follow this and all other Supreme Court and Fifth Circuit precedent.

**11. Does the meaning of the Eighth Amendment change over time? Why or why not?**

Response: The Constitution contains enduring principles that are generally fixed in meaning but may be applied to modern circumstances. See *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2132 (2022). The Eighth Amendment prohibitions on excessive fines, excessive bail, and cruel and unusual punishment are similarly enduring principles, but their applicability “must change as the basic mores of society change.” *Kennedy v. Louisiana*, 554 U.S. 407, 419, as modified (Oct. 1, 2008), opinion modified on denial of reh’g, 554 U.S. 945 (2008) (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972) (Burger, C. J., dissenting)).

**12. Is the death penalty constitutional?**

Response: In *Gregg v. Georgia*, the Supreme Court held that the death penalty is constitutional. 428 U.S. 153, 187 (1976).

**13. Please describe the legal basis that allows federal courts to issue universal injunctions.**

Response: Under Article III of the Constitution, judicial power extends to all cases “in law and equity.” Injunctions, a common form of equitable powers, are governed by Federal Rule of Civil Procedure 65. The Supreme Court has held that a plaintiff must demonstrate certain factors to warrant an injunction, including irreparable injury, inadequate remedies at law, and that a balance of hardships and public interest favor granting an injunction. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156–57 (2010) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)). With respect to universal injunctions, the Fifth Circuit has held: “[T]he Constitution vests the District Court with the judicial Power of the United States. That power is not limited to the district wherein the court sits but extends across the country. It is not beyond the power of a court, in appropriate circumstances, to issue a nationwide injunction.” *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) (quotations omitted). However, the Fifth Circuit has cautioned that “[s]uch injunctions at times can constitute ‘rushed, high-stake, low-information decisions,’ while more limited equitable relief can be beneficial.”

*Louisiana v. Becerra*, 20 F.4th 260, 264 (5th Cir. 2021) quoting *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch J., concurring in the grant of a stay).

**14. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.**

Response: Judges take an oath to “administer justice without respect to persons, and do equal right to the poor and to the rich, and [to] faithfully and impartially discharge and perform all [his or her] duties . . . under the Constitution and laws of the United States.” 28 U.S.C. § 453. Throughout my career as a practicing litigator, I have been fortunate to appear before countless judges who are like-minded in their commitment to this oath. To single out any one judge of whom I am particularly fond would do a disservice to the others—particularly among the extraordinary group of judges in the Eastern District of Louisiana, where I have been nominated. I will note, however, that I often find myself most inspired by judges who have the courage to do the right thing under the law, even when it isn’t easy or convenient. This might involve, for example, exhibiting humility upon realizing that he or she made an erroneous off-the-cuff ruling; or patience in explaining the law to a confused criminal defendant; or grace and decorum when tensions are mounting between the lawyers; or fidelity to the rule of law even when the consequences may run afoul of his or her personal views. If I am confirmed, I will seek to follow a similar path, administering justice faithfully and impartially under the Constitution and the law.

**Questions from Senator Thom Tillis**  
**for Brandon Scott Long Nominee to be United States District Court Judge for the Eastern**  
**District of Louisiana**

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

Response: Yes. "A judge . . . should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Code of Conduct for U.S. Judges, Canon 2(A). Judges are required to render decisions in a fair and impartial manner, setting aside any personal views.

**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[ally] 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 to be appropriate. If confirmed as a judge, I cannot and will not allow any personal views I may have to guide my decisions. I am required to adhere strictly to governing texts and precedents.

**3. Do you believe impartiality is an aspiration or an expectation for a judge?**

Response: Judges take an oath to "faithfully and impartially discharge and perform" their duties. 28 U.S.C. § 453. The public expects and deserves judges who will exercise their duties with impartiality.

**4. Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

Response: No. Judges are not policy makers. The role of a judge is to decide cases and controversies through a fair and impartial application of the law. *See* Code of Conduct for U.S. Judges, Canons 2(A) and 3.

**5. Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

Response: The desirable outcome in any case is one that is grounded in the law and precedent, based upon a rigorous and open-minded analysis of the facts on record and arguments of the parties.

**6. Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

Response: No. If confirmed as a judge, I cannot and will not allow any personal views I may have guide my decisions. I am required to adhere strictly to governing texts and precedents.

**7. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that the original public meaning of the Second Amendment protected an individual's right to possess a handgun in the home and to carry a handgun outside the home for self-defense. The Supreme Court has further held that a firearm restriction infringes on Second Amendment rights when the government fails to show that the restriction is consistent with the Second Amendment's text and historical understanding. *Bruen*, 142 S. Ct. at 2131. If confirmed, I will faithfully and dispassionately apply these principles, and any other governing Supreme Court and Fifth Circuit precedent, to the facts of any Second Amendment case that comes before me.

**8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?**

Response: I would closely evaluate the facts in the record and arguments of the parties, and then faithfully and dispassionately apply to the facts the governing principles discussed in response to question 7, along with any other applicable Supreme Court and Fifth Circuit precedent. Beyond this general observation, it would be inappropriate to comment on the approach I would take, as that could be seen as prejudging an issue that might come before me should I be confirmed.

**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: Qualified immunity protects government officials from civil liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known," *i.e.*, rights that are "clearly established." *Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). This protection is designed to balance two important interests—the need to hold officials accountable for unreasonable or irresponsible behavior, while shielding officials from liability for reasonable conduct or mere mistakes in judgment. *Pearson*, 555 U.S. at 231. In presiding over a case involving qualified immunity, I would follow my standard approach of closely analyzing the law and facts, studying the arguments carefully and with an open mind, and fairly and dispassionately applying the relevant law and binding precedent. Beyond this general observation, it would be inappropriate to comment on the approach I would take, as that could be seen as prejudging an issue that might come before me should I be confirmed.

**10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?**

Response: If I'm confirmed, the principles outlined in question 9, as well as any other applicable law and precedent, will govern my decisions on qualified immunity cases. Questions relating to the scope of the qualified immunity doctrine are for policymakers to decide. Any personal beliefs I may have on the subject are of no moment.

**11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: Please see my responses to questions 9 and 10.

**12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?**

Response: The Patent Act provides that "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U.S.C. § 101. The statute thus provides for four distinct categories of inventions or discoveries: processes, machines, manufactures, and compositions of matter. *Id.* The Supreme Court has found implicit exceptions for certain categories not covered under § 101, namely, laws of nature, natural phenomena, and abstract ideas. *See Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013). Evaluating eligibility under § 101 is merely the threshold test; the invention must also satisfy additional "conditions and requirements," including that the invention be novel, nonobvious, and fully and particularly described. *Bilski v. Kappos*, 561 U.S. 593, 602 (2010). As a judicial nominee, it would not be appropriate for me to offer any personal views I may have on these and other principles of the Supreme Court's patent eligibility jurisprudence. If confirmed, as with all cases, I will be bound to follow Supreme Court and Fifth Circuit precedent. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[A] precedent of this Court must be followed by the lower federal courts[.]").

**13. Do you believe the current patent eligibility jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: Please see my response to question 12.

**14. 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 approximately 18 years of legal practice, first as a private attorney practicing primarily in the area of criminal law, and then as a criminal Assistant U.S. Attorney in two jurisdictions, I have not handled copyright law cases. While I handled a small number of civil litigation matters in private practice, none of those matters involved copyright law. However, on countless occasions throughout my career, circumstances have required me to learn new areas of law quickly. On such occasions, my approach has been consistent: perform exhaustive legal research, thoroughly run to ground the facts, and methodically and dispassionately apply the law to the facts of my case. If confirmed as a district court judge, I would follow a similar approach when confronting new areas of law.

**b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

Response: In my approximately 18 years of legal practice, first as a private attorney practicing primarily in the area of criminal law, and then as a criminal Assistant U.S. Attorney in two jurisdictions, I have not handled copyright law cases. While I handled a small number of civil litigation matters in private practice, none of those matters involved the Digital Millennium Copyright Act. However, on countless occasions throughout my career, circumstances have required me to learn new areas of law quickly. On such occasions, my approach has been consistent: perform exhaustive legal research, thoroughly run to ground the facts, and methodically and dispassionately apply the law to the facts of my case. If confirmed as a district court judge, I would follow a similar approach when confronting new areas of law.

**c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?**

Response: In my approximately 18 years of legal practice, first as a private attorney practicing primarily in the area of criminal law, and then as a criminal Assistant U.S. Attorney in two jurisdictions, I have not handled cases involving intermediary liability for online service providers. While serving on detail to the FBI between February 2020 and July 2021, I became generally familiar with Section 230 and its protections for online platforms, but I was not involved in investigations or cases relating to Section 230. If confirmed as a district court judge and confronted with a new area of law, as I have on countless occasions throughout my career, my approach will be consistent: perform exhaustive legal research, thoroughly run to ground the facts, and methodically and dispassionately apply the law to the facts of the case.



**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 approximately 18 years of legal practice, first as a private attorney practicing primarily in the area of criminal law, and then as a criminal Assistant U.S. Attorney in two jurisdictions, I have not handled First Amendment, free speech, or intellectual property cases. While I handled a small number of civil litigation matters in private practice, none of those matters involved the First Amendment, free speech, or intellectual property. However, on countless occasions throughout my career, circumstances have required me to learn new areas of law quickly. On such occasions, my approach has been consistent: perform exhaustive legal research, thoroughly run to ground the facts, and methodically and dispassionately apply the law to the facts of my case. If confirmed as a district court judge, I would follow a similar approach when confronting new areas of law.

**15. 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 reported that 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 the meaning of a statute, “the authoritative statement is the statutory text, not the legislative history or any other extrinsic material.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). Such extrinsic materials have “a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.” *Id.* That is because “legislative history is itself often murky, ambiguous, and contradictory.” *Id.* And judicial reliance on legislative history could encourage committee members and staff to strategically manipulate legislative materials to accomplish results that could otherwise not be achieved through the legislative process. *Id.* If I am confirmed as a district court judge, my own exploration of legislative history would be grounded in these principles as well as any other applicable Supreme Court and Fifth Circuit precedent.

**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: Materials such as policy statements, agency manuals, and enforcement guidelines for agencies like the U.S. Copyright Office do not carry legal authority, but are entitled to some deference given the “specialized experience and broader investigations and information” of the agency. *See Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 449 n. 9 (2003) (quoting *Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000)) (referring to the EEOC’s Compliance Manual); *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944) (finding an agency administrator’s rulings to “constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance”). While such interpretations are not awarded “*Chevron*-style deference,” they are “entitled to respect” so long as they have the “power to persuade.” *Christensen*, 529 U.S. at 587.

- 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: Questions of when online service providers should be required to act are for policymakers to decide. Any personal beliefs I may have on the subject are of no moment. If confirmed, I will faithfully and dispassionately apply the relevant law and precedent to the facts.

- 16. 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 Supreme Court has stated that “[w]hile every statute’s meaning is fixed at the time of enactment, new applications may arise in light of changes in the world.” *Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018). My approach to interpreting the DMCA, as with any statute, would be consistent and predictable. I would focus on the language of the statute and any binding Supreme Court and Fifth Circuit precedent as to how the statute should be applied.

- 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 16a. My role would be to apply governing Supreme Court and Fifth Circuit precedent faithfully and dispassionately to any case before me.

- 17. 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 this practice.

**a. Do you see “judge shopping” and “forum shopping” as a problem in litigation?**

Response: It is axiomatic that judge shopping is a discouraged practice. *See Gasperini v. Ctr. for Humans., Inc.*, 518 U.S. 415, 428 (1996) (noting that the *Erie* rule is designed to discourage forum shopping); *Garcia v. Int’l Constr. Equip., Inc.*, 765 F. App’x 109, 110 (5th Cir. 2019) (permitting an intra-district case transfer to prevent judge-shopping); *cf. McCuin v. Texas Power & Light Co.*, 714 F.2d 1255, 1262 (5th Cir. 1983) (“In a perfect judicial system forum-shopping would be paradoxical. The same results would obtain in every forum and after every type of trial.”). The Eastern District of Louisiana, to which I have been nominated, currently has fourteen sitting judges in a single courthouse. Cases are allocated across the different sections of the court, thus limiting litigants’ ability to engage in judge shopping.

**b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?**

Response: If confirmed, it will be my duty to faithfully and dispassionately apply all governing law and binding precedent to the cases and controversies in my court. Moreover, I will abide by all professional and legal responsibilities inherent in the role of a district court judge. Any beliefs I may have regarding the responsibility of judges are of no moment.

**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: Please see my response to question 17b.

**18. 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 17a.

**19. 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 17a.

**Senate Judiciary Committee Hearing  
“Nominations”  
Questions for the Record for Brandon Long  
to be United States District Judge for the Eastern District of Louisiana**

**QUESTIONS FROM SENATOR BLACKBURN**

- 1. At your confirmation hearing on July 12, 2023, you declined to answer questions about your involvement in various matters during your time as Deputy Chief of Staff and Acting Chief of Staff to Federal Bureau of Investigation (FBI) Director Christopher Wray. In declining to answer such questions, you cited the Code of Judicial Conduct and your current role at the Department of Justice (DOJ), neither of which preclude you from answering questions about your role at the FBI.**

Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the responses below.

- a. Please state below any meeting you participated in related to any of the following topics:**

Response: From February 2020 to July 2021, I was on “detail” from the U.S. Attorney’s Office in New Orleans to the FBI in Washington, DC. As Deputy Chief of Staff and Acting Chief of Staff to the FBI Director, I supported the Director’s Office on various policy, public affairs, and administrative matters. By way of example, I assisted with the preparation of many of the Director’s public statements and internal communications, advised on media appearances and congressional engagements, worked with the Department of Justice on policy matters affecting the FBI, and helped oversee components of the Director’s Office staff. In these roles, I did not have oversight or decision-making authority over investigations, I did not personally participate in any investigations, and I was outside of what I would call the “operational chain of command.” At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases, investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director’s staff are thus outside of the operational chain of command.

Accordingly, I was not in the operational chain of command, I had no oversight or decision-making authority, and I did not participate in any investigations relating to the topics below.

I am presently serving as a line Assistant U.S. Attorney in New Orleans. When I left the FBI in July 2021, I left behind all FBI emails, electronic files, memoranda, phone records, and work calendars. I do not presently have access to such materials. Thus, I am not in possession, custody, or control of records of meetings I participated in from my time as Deputy and Acting Chief of Staff at the FBI.

To the best of my recollection, while serving as a staff member to the Director, I attended meetings involving the FBI's efforts to respond to violence and destruction of property in summer 2020. I also attended meetings relating to the FBI's work in ensuring the integrity of the election in 2020. I do not recall any meetings specifically relating to President Trump. However, from February 2020 through January 2021, President Trump was in office and, on occasion, sought to advance certain priorities within the Department of Justice. For instance, Operation Legend, a law enforcement initiative in 2020 where the Department surged resources in select cities to address violent crime, was an important program for the Administration, and it's possible that the President would have been referenced during meetings relating to Operation Legend. I do not recall attending any meetings regarding the Hunter Biden laptop.

- i. the Black Lives Matter protests that occurred during the summer of 2020**
  - ii. the Hunter Biden laptop incident that was publicized in October 2020**
  - iii. the 2020 United States presidential election**
  - iv. President Donald J. Trump.**
- b. Please provide any email correspondence you sent or received related to any of the following topics:**

Response: Having left the FBI in July 2021, I do not have possession, custody, or control of any email correspondence from my time as Deputy and Acting Chief of Staff at the FBI.

- i. the Black Lives Matter protests that occurred during the summer of 2020**
  - ii. the Hunter Biden laptop incident that was publicized in October 2020**
  - iii. the 2020 United States presidential election**
  - iv. President Donald J. Trump.**
- c. Please provide any memoranda you drafted, sent, or received related to any of the following topics:**

Response: Having left the FBI in July 2021, I do not have possession, custody, or control of any memoranda from my time as Deputy and Acting Chief of Staff at the FBI.

- i. the Black Lives Matter protests that occurred during the summer of 2020**
  - ii. the Hunter Biden laptop incident that was publicized in October 2020**
  - iii. the 2020 United States presidential election**
  - iv. President Donald J. Trump.**
- d. Please state whether you participated in any phone conversation related to any of the following topics:**

Response: Having left the FBI in July 2021, I do not have possession, custody, or control of any phone records from my time as Deputy and Acting Chief of Staff at the FBI, and I do not have specific recollection of phone conversations relating to the topics below. However, during my time as Deputy and Acting Chief of Staff, it's possible that I participated in phone conversations regarding the FBI's efforts to respond to violence and destruction of property in summer 2020, as well as the FBI's work in ensuring the integrity of the election in 2020. I do not recall any phone conversations specifically relating to President Trump; however, as described in response to 1(a) above, it's possible that the President or his priorities would have been referenced during phone conversations I participated in. I do not recall any phone conversations regarding the Hunter Biden laptop.

- i. the Black Lives Matter protests that occurred during the summer of 2020**
  - ii. the Hunter Biden laptop incident that was publicized in October 2020**
  - iii. the 2020 United States presidential election**
  - iv. President Donald J. Trump.**
- e. Please provide any other document or communication you drafted, sent, or received related to any of the following topics:**

Response: Having left the FBI in July 2021, I do not have possession, custody, or control of any other documents or communications from my time as Deputy and Acting Chief of Staff at the FBI.

- i. the Black Lives Matter protests that occurred during the summer of 2020**
- ii. the Hunter Biden laptop incident that was publicized in October 2020**

iii. the 2020 United States presidential election

iv. President Donald J. Trump.

In responding to each of the above requests, please provide all documents in your possession, custody, and control (including, but not limited to, email correspondence, text messages, instant messages, memoranda, and meeting notes) containing any of the following terms:

- i. "Hunter Biden"
- ii. "Hunter"
- iii. "Black Lives Matter"
- iv. "BLM"
- v. "2020 riots"
- vi. "2020 protests"
- vii. "2020 election"
- viii. "2020 presidential election"
- ix. "2020 US presidential election"
- x. "2020 U.S. presidential election"
- xi. "2020 United States presidential election"
- xii. "Donald J. Trump"
- xiii. "Donald Trump"
- xiv. "Trump."



**Senator Lindsey Graham, Ranking Member**  
**Questions for the Record**  
**Judge Matthew James Maddox**  
**Nominee to be a United States District Judge for the District of Maryland**

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 statement or its context, but I disagree with the statement. As a United States Magistrate Judge, I carefully and faithfully apply controlling law to the facts of each case before me and render decisions based solely on that analysis, without regard to any personal opinions or partiality to any particular outcome. I would continue to take this approach if confirmed to serve as a United States District Judge.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s stock response was, “They can’t catch ’em all.” Is this an appropriate approach for a federal judge to take?**

Response: I am not familiar with this statement. It does not describe the approach that I take in my service as a United States Magistrate Judge and would take if confirmed to serve as a United States District Judge. As a judge, I faithfully apply controlling precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit.

3. **Please define the term “living constitution.”**

Response: Black’s Law Dictionary (11th ed. 2019) defines “living constitution” as “[a] constitution whose interpretation and application can vary over time according to changing circumstances and changing social values.”

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 am not familiar with this statement or its context. The United States Constitution is a fixed and enduring document that may be applied to circumstances that did not exist at the time of ratification.

5. **Under Supreme Court and Fourth 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: Black’s Law Dictionary (11th ed. 2019) defines a “fact” as “[s]omething that actually exists; an aspect of reality” or “[a]n actual or alleged event or circumstance, as

distinguished from its legal effect, consequence, or interpretation.” The United States Supreme Court has “noted the vexing nature of the distinction between questions of fact and questions of law[.]” and has found no “rule or principle that will unerringly distinguish a factual finding from a legal conclusion.” Pullman-Standard v. Swint, 456 U.S. 273, 288 (1982). “[T]he fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question.” Miller v. Fenton, 474 U.S. 104, 114 (1985).

**6. Please describe your views regarding mandatory minimum sentences.**

Response: Certain federal statutes mandate minimum terms of imprisonment for certain offenses. If confirmed to serve as a United States District Judge, I would enter sentences in accordance with 18 U.S.C. § 3553 and the statutes prescribing minimum and maximum penalties for the offenses of conviction in every criminal case assigned to me. Any prison sentence that falls below or exceeds that mandated by statute would be beyond the authority of a sentencing judge.

**7. How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: I understand “attacks” on a sitting judge to be conduct intended to threaten or harm the judge physically or otherwise, which may rise to the level of criminality or risk to judicial security. *See, e.g.*, 18 U.S.C. § 1503 (criminal penalties for use of threats or force to influence, intimidate, or impede judicial officers). I understand criticism of a judicial opinion to be the expression of views contrary to the substance or methodology of the opinion, which is constitutionally protected. *See, e.g.*, Pennekamp v. Florida, 328 U.S. 331 (1946); Craig v. Harney, 331 U.S. 367 (1947); Nebraska Press Assn. v. Stuart, 427 U.S. 539 (1976).

**8. 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 understand any of the above listed purposes of sentencing to be more important than the others. The factors to be considered in federal sentencing are outlined in 18 U.S.C. § 3553 without any distinctions based on level of importance. If confirmed to serve as a United States District Judge, I would enter sentences in accordance with 18 U.S.C. § 3553 and the statutes prescribing minimum and maximum penalties for the offenses of conviction in every criminal case assigned to me. I would also consider applicable provisions of the United States Sentencing Guidelines, including the advisory sentencing guidelines range.

**9. 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 aware of any one particular Supreme Court decision that provides an example of my judicial philosophy. I am guided by several principles in my work as a United States Magistrate Judge that would continue to guide me if I am confirmed to serve as a United States District Judge. In every case, I approach each issue presented to me with an open mind and avoid prejudgment or letting any personal opinions I might have affect my assessment of any issue. I carefully review and meaningfully consider the arguments made by each party and consult the legal authorities cited by the parties to determine independently the extent to which they support the arguments made. I engage in rigorous and independent study of the law that applies to the issues presented to me for decision, which includes finding and reviewing relevant constitutional and statutory provisions, binding precedents of the Supreme Court and Court of Appeals for the Fourth Circuit, applicable decisions of other courts, and relevant sections of commonly cited treatises. I make an impartial and honest assessment of the facts and evidence presented by the parties, fairly and faithfully apply the law to the facts in the record, and render a decision based solely on that analysis. In rendering a decision in any case, I focus exclusively on resolving the controversy presented to me and support the decision with clear explanation of my reasoning and with reference to the legal rules and authorities upon which the decision relies.

**10. Please identify a Fourth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: I am not aware of any one particular Fourth Circuit decision that provides an example of my judicial philosophy. Please see my response to Question 9.

**11. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: Title 18, United States Code, Section 1507 provides:

Whoever, 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, 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, shall be fined under this title or imprisoned not more than one year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

If an issue involving this statute is presented to me for decision in any case, I would fairly and impartially apply the law to the facts and render a decision based solely on that analysis.

**12. Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: In Cox v. State of Louisiana, 379 U.S. 559, 563 (1965), the United States Supreme Court upheld a state statute modeled upon § 1507, holding that it did not “infringe upon the constitutionally protected rights of free speech and free assembly.”

**13. What is the operative standard for determining whether a statement is not protected speech under the “fighting words” doctrine?**

Response: The United States Supreme Court has explained that “fighting words” are among “certain well-defined and narrowly limited classes of speech” that may be prevented or punished by the government without burdening First Amendment rights. Chaplinsky v. State of New Hampshire, 315 U.S. 568, 571–72 (1942). Fighting words are described as those “that are ‘likely to provoke the average person to retaliation, and thereby cause a breach of the peace[.]’” Texas v. Johnson, 491 U.S. 397, 409 (1989) (quoting Chaplinsky, 315 U.S. at 574), and as “personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction[.]” Cohen v. California, 403 U.S. 15, 20 (1971). “[S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.” Chaplinsky, 315 U.S. at 572. “[T]he exclusion of ‘fighting words’ from the scope of the First Amendment simply means that, for purposes of that Amendment, the unprotected features of the words are, despite their verbal character, essentially a ‘nonspeech’ element of communication.” R.A.V. v. City of St. Paul, 505 U.S. 377, 386 (1992).

**14. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: The United States Supreme Court has identified “true threats” as among the types of utterances that are not protected by the First Amendment. Virginia v. Black, 538 U.S. 343, 359 (2003). True threats include “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. “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 (citations omitted).

**15. 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, it would be generally inappropriate for me to comment on the merits of a decision of the Supreme Court. Brown v. Board of Education of Topeka has been regarded by other nominees as an exception to this general practice because its merits are unlikely to be challenged or reassessed by the United States Supreme Court. I will join other nominees in commenting that this case was correctly decided.

**b. Was *Loving v. Virginia* correctly decided?**

Response: Yes. As a sitting judge and judicial nominee, it would be generally inappropriate for me to comment on the merits of a decision of the Supreme Court. Loving v. Virginia has been regarded by other nominees as an exception to this general practice because its merits are unlikely to be challenged or reassessed by the United States Supreme Court. I will join other nominees in commenting that this case was correctly decided.

**c. Was *Griswold v. Connecticut* correctly decided?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in Griswold v. Connecticut is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

**d. Was *Roe v. Wade* correctly decided?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. That said, the Court has overturned Roe v. Wade and held that there is no fundamental right to abortion. See Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022). I would apply Dobbs if confirmed to service as a United States District Judge.

**e. Was *Planned Parenthood v. Casey* correctly decided?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States

Supreme Court. That said, the Court has overturned Planned Parenthood v. Casey and held that there is no fundamental right to abortion. See Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022). I would apply Dobbs if confirmed to service as a United States District Judge.

**f. Was *Gonzales v. Carhart* correctly decided?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in Gonzales v. Carhart is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

**g. Was *District of Columbia v. Heller* correctly decided?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in District of Columbia v. Heller is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

**h. Was *McDonald v. City of Chicago* correctly decided?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in McDonald v. City of Chicago is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

**i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

**j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in New York State Rifle & Pistol Association v. Bruen is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

**k. Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in Dobbs v. Jackson Women's Health Organization is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

**16. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: The United States Supreme Court has held that the Second Amendment guarantees the individual right to possess and carry firearms for self-defense. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010); New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022). In Bruen, the Court held that firearm regulations are permissible if they are "consistent with this Nation's historical tradition of firearm regulation." Id. at 2126. The historical inquiry necessary to assess the constitutionality of contemporary firearm regulations "will often involve reasoning by analogy[.]" Id. at 2132. Central to this analogical inquiry are considerations of "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified. . . ." Id. at 2133. If confronted with a constitutional challenge to a firearm regulation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, review and faithfully apply Bruen and any other binding precedents on the matter, and render a decision based solely upon an application of the law to the facts of the case.

**17. 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.

- 18. 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.

- 19. 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: Not applicable.

- 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.

- 20. 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.

- 21. 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.

22. **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 November 2020, a notice was posted on Senator Cardin's website announcing upcoming vacancies on the United States District Court for the District of Maryland. In December 2020, I submitted an application to a judicial selection committee in response to the notice. I interviewed with members of the committee on December 18, 2020. In 2022, while serving as a U.S. Magistrate Judge in the District of Maryland, I became aware of upcoming vacancies among the district judges. During a meeting with a member of Senator Cardin's judicial selection committee in December 2022, I expressed my interest in nomination for the position of U.S. District Judge and supplemented my previous application materials. On December 20, 2022, I interviewed with Senators Cardin and Van Hollen for one of the vacancies. I received an email from an official from the Office of the White House Counsel on December 22, 2022, advising me that I had been recommended as a potential candidate and requesting an interview. On December 23, 2022, I interviewed with attorneys from the White House Counsel's Office. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 20, 2023, the President announced his intent to nominate me.

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, 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 Foundations, or did anyone do so on your behalf? 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 Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

- 28. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: Please see my response to Question 22.

- 29. Please explain, with particularity, the process whereby you answered these questions.**

Response: The Office of Legal Policy at the Department of Justice (OLP) sent me these questions on July 19, 2023. I reviewed and researched the questions and drafted responses. The OLP provided limited feedback on my draft responses. I then finalized and submitted my responses.

Senate Judiciary Committee  
Nominations Hearing  
July 12, 2023  
Questions for the Record  
Senator Amy Klobuchar

**For Matthew James Maddox, nominee to be United States District Court Judge for the District Court of Maryland**

**Last year, you were appointed by judges on the United States District Court for the District of Maryland to serve as a magistrate judge. In that role you authored 22 decisions, none of which have been reversed by a reviewing court.**

- **How has your experience as a magistrate judge informed your view on the role of a federal district court judge?**

Response: My experience as a federal magistrate judge in the District of Maryland has given me a clear, constant, and unobstructed view of the role of federal district judges. A magistrate judge's responsibilities closely complement, and often overlap with, those of district judges. My duties as a magistrate judge include adjudicating motions and issuing written opinions and orders in all stages of civil cases, presiding over civil trials with the consent of the parties, and conducting settlement conferences in civil cases assigned to other judges. In criminal matters, I preside over preliminary proceedings in felony cases, all proceedings in misdemeanor cases, and review and authorize search and seizure warrants, criminal complaints, and arrest warrants.

Since my service as a magistrate judge began in February 2022, I have served as presiding judge in dozens of civil cases by consent of the parties pursuant to 28 U.S.C. § 636(c). In these cases, my role is the same as that of a district judge. In several of these cases, I have resolved motions to dismiss and motions for summary judgment, and I have presided over two trials, including one jury trial and one bench trial. Additionally, I decide non-dispositive pretrial matters and provide recommendations on dispositive matters in civil cases referred to me by district judges pursuant to 28 U.S.C. § 636(b), which have required me to resolve discovery disputes and author reports and recommendations on motions for default judgment.

In felony criminal matters, my responsibilities include conducting detention hearings where, upon consideration of a broad range of statutory factors, I decide whether the accused is to be detained or released under supervision pending trial. I have also accepted guilty pleas and entered sentences in misdemeanor criminal cases—a role that district judges fulfill in felony cases. Alongside the district judges of my court, I have participated in court administration as a member of three court committees and through attendance of regular bench meetings.

In sum, as a magistrate judge, I have enjoyed the honor and privilege of regularly participating and sharing in the critical work of district judges. My experience on the bench has given me great insight into a wide range of issues that arise in the diverse landscape of federal civil litigation and have prepared me to make the weighty decisions committed to district judges in felony criminal cases. I have developed effective and cooperative working relationships with other judges in the District of Maryland, my chambers staff and those of other judges, and the Office of the Clerk, which have assisted me in managing a significant volume of case assignments. I have become familiar with and accustomed to the fast pace a federal judge's work commonly requires without sacrificing the quality of the important decisions I make or rigor of my preparation to make those decisions. Since my appointment to the bench, I have remained mindful of both the importance of the decisions I make and the constitutional limits on my authority, and I have remained committed to fairness, impartiality, and the rule of law. I would continue in these practices and commitments if I have the honor of being confirmed to serve as a district judge.

- **What steps have you taken to ensure that those who appear before you have confidence that the court reached a fair and just decision, regardless of the outcome?**

Response: It is of critical importance that, in the discharge of our duties, judges proactively inspire confidence in the fairness of the courts. I have sought to achieve this goal in all aspects of my work as a magistrate judge. This effort begins with thorough preparation for every hearing and treating every litigant and attorney with dignity and respect at every encounter in court. During hearings and conferences, I give attorneys and pro se litigants all the time they need to explain their positions on disputed matters. In these settings, I listen actively and attend to each point that is made in support of each party's position. In response, I craft questions designed to cast the party's argument in the best light while also challenging the substantive merits of their position with citation to controlling law. In rendering a decision, whether orally or in writing, I am careful to address each point that has been made, provide a clear rationale and full explanation for rejecting those arguments I have resolved to set aside, and support my reasoning with citation to controlling provisions of law and judicial precedents. Being clear and thorough in setting out my reasoning carries the dual benefits of demonstrating the merit of my decision and conveying to the non-prevailing party that I have given their position serious and careful consideration. My goal in every case is that the non-prevailing party will be left with no doubt that they have received a fair hearing despite the unfavorable outcome.

**Senator Mike Lee**  
**Questions for the Record**

**Matthew Maddox, Nominee to the United States District Court for the District of Maryland**

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

Response: I am guided by several principles in my work as a United States Magistrate Judge that would continue to guide me if I am confirmed to serve as a United States District Judge. In every case, I approach each issue presented to me with an open mind and avoid prejudgment or letting any personal opinions affect my assessment of any issue. I carefully review and meaningfully consider the arguments made by each party and consult the legal authorities cited by the parties to determine independently the extent to which they support the arguments made. I engage in rigorous and independent study of the law that applies to the issues presented to me for decision, which includes finding and reviewing relevant constitutional and statutory provisions, binding precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit, applicable decisions of other courts, and relevant sections of commonly cited treatises. I make an impartial and honest assessment of the facts and evidence presented by the parties, fairly and faithfully apply the law to the facts in the record, and render a decision based solely on that analysis. In rendering a decision in any case, I focus exclusively on resolving the controversy presented to me and support the decision with clear explanation of my reasoning and with reference to the legal rules and authorities upon which the decision relies.

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

Response: As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would follow guidance from the United States Supreme Court in interpreting any federal statute. I would begin with the text and structure of the statute in question. I would also consult any binding precedents of the Supreme Court or United States Court of Appeals for the Fourth Circuit interpreting the same provision. If the meaning of a provision is clear from its text (including any relevant statutory definitions) and any binding precedent, then I would apply that meaning. See Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) (“In statutory interpretation disputes, a court’s proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. . . . Where . . . that examination yields a clear answer, judges must stop.”) (citations omitted).

If the law is susceptible to multiple reasonable interpretations and there is no binding precedent on the meaning of the statute, then I would consult persuasive authorities on the issue, including the decisions of other judges in the district and circuit and courts outside the circuit. I would also apply canons of interpretation endorsed by the Supreme Court and the Fourth Circuit for use in interpreting similar or analogous provisions of law. If this process does not yield a clear answer, I would consult legislative history to aid discernment of the legislative intent and purpose of the

statute to the extent doing so is consistent with Supreme Court guidance. See Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005) (“Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.”).

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

Response: As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would follow guidance from the United States Supreme Court in interpreting any constitutional provision. I would begin with the text of the constitutional provision in question and any binding precedents of the Supreme Court or United States Court of Appeals for the Fourth Circuit interpreting the same provision. I expect that binding precedent would control the interpretation of most constitutional provisions likely to be at issue in litigation. In the unlikely instance that binding precedent does not resolve the issue, I would consult any interpretations of the provision made by other judges of the district and circuit as well as courts outside the circuit. I would also seek guidance from any Supreme Court or Fourth Circuit decisions interpreting related or analogous provisions of the Constitution, which would guide my interpretive methodology. Examination of historical legal texts would be warranted to conduct the textual and historical analysis necessary to discern the original public meaning of the provision. See District of Columbia v. Heller, 554 U.S. 570, 605 (2008) (stating that “the examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation[]”).

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

Response: Please see my response to Question 3. The United States Supreme Court has stated that inquiry into “the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation.” District of Columbia v. Heller, 554 U.S. 570, 605 (2008) (emphasis omitted).

**5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: Please see my response to Question 2. The plain meaning of the text is dispositive. See Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) (“In statutory interpretation disputes, a court’s proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. . . . Where . . . that examination yields a clear answer, judges must stop.”) (citations omitted).

**a. Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: Black's Law Dictionary (11th ed. 2019) defines "plain meaning" as "[t]he meaning attributed to a document (usu. by a court) by giving the words their ordinary sense, without referring to extrinsic indications of the author's intent." The United States Supreme Court has stated that it "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." Bostock v. Clayton County, Georgia, 140 S. Ct. 1731, 1738 (2020). It has also stated that inquiry into "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." District of Columbia v. Heller, 554 U.S. 570, 605 (2008) (emphasis omitted).

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

Response: Article III standing requires the plaintiff to show "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2203 (2021) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–561 (1992)).

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

Response: The powers of Congress are limited to those enumerated in the Constitution. National Federation of Independent Business v. Sebelius, 567 U.S. 519, 534–35 (2012) (citing Gibbons v. Ogden, 9 Wheat. 1, 195 (1824), and McCulloch v. Maryland, 4 Wheat. 316, 405 (1819)); see also Murphy v. National Collegiate Athletic Association, 138 S. Ct. 1461, 1476 (2018) ("The Constitution confers on Congress not plenary legislative power but only certain enumerated powers."). Specific legislative powers of Congress are outlined in Section 8 of Article I and in other articles and amendments to the Constitution. Importantly, Congress's enumerated powers include the power to make laws that are "necessary and proper for carrying into [e]xecution" other powers enumerated in Article I. Art. I, § 8, cl. 18. The U.S. Supreme Court has interpreted the Necessary and Proper Clause "to give Congress great latitude in exercising its powers[.]" National Federation of Independent Business, 567 U.S. at 537.

**8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: The United States Supreme Court has recognized that "[t]he 'question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.'" National Federation of Independent Business v. Sebelius, 567 U.S. 519, 570 (2012) (quoting Woods v. Cloyd W. Miller Co., 333 U.S. 138, 144 (1948)). If presented with a challenge to the constitutionality of an act



of Congress that lacks reference to any specific legislative power enumerated in the Constitution, I would determine the meaning of the statute as directed by binding precedent, carefully consider the parties' arguments, review the constitutional provisions relied upon by the parties and any precedents interpreting those provisions, and impartially render a decision based on that analysis.

**9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The United States Supreme Court has recognized constitutionally protected rights that are not expressly enumerated in the Constitution, including certain fundamental rights and liberties protected by the Due Process Clause. These fundamental rights and liberties have included the rights to marry, to have children, to direct the education and upbringing of one's children, and to marital privacy. Washington v. Glucksberg, 521 U.S. 702, 720 (1997) (citing cases). In Glucksberg, however, the Court cautioned that "the utmost care" must be exercised when it is asked to recognize fundamental liberty interests not enumerated in the Bill of Rights, "lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court[.]" Id. The Court held that the nation's history, legal traditions, and practices provide "crucial 'guideposts for responsible decisionmaking[']" in this area, which "direct and restrain [the Court's] exposition of the Due Process Clause." Id. at 721. The Court specifically identified "two primary features" of its substantive due process analysis: (1) that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition[.] . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed[.]" and (2) that the asserted fundamental liberty interest must be carefully described. Id. at 720–21 (internal quotation marks and citations omitted).

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

Response: Please see my response to Question 9.

**11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?**

Response: As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would apply the controlling precedents of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit to decide cases involving personal and economic rights asserted under the Due Process Clause.

The Due Process Clause “provides heightened protection against government interference with certain fundamental rights and liberty interests.” Washington v. Glucksberg, 521 U.S. 702, 720 (1997). The Supreme Court has recently held “that the Fourteenth Amendment does not protect the right to an abortion.” Dobbs v. Jackson Women’s Health Organization, 142 S. Ct. 2228, 2248 (2022). Notwithstanding, the Court’s precedents recognizing various other personal rights as fundamental and protected by the Due Process Clause (including those discussed in my response to Question 9) remain good law.

In contrast, an economic regulation will generally survive a due process challenge if it is “rationally related” to legitimate governmental interests. Brown v. Hovatter, 561 F.3d 357, 368 (4th Cir. 2009). “Rational basis scrutiny in the due process context—as in the equal protection context—is quite deferential.” Colon Health Centers of Am., LLC v. Hazel, 733 F.3d 535, 548 (4th Cir. 2013); see also Holland v. Keenan Trucking Co., 102 F.3d 736, 740 (4th Cir. 1996) (federal legislation within Congress’s “commerce power to regulate economic matters . . . carries a heavy presumption of validity”).

Notably, “[t]he doctrine that prevailed in Lochner . . . and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded.” Ferguson v. Skrupa, 372 U.S. 726, 730 (1963). In Ferguson, the Supreme Court continued, “Legislative bodies have broad scope to experiment with economic problems, and this Court does not sit to ‘subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.’” Id. at 730–31 (citation omitted).

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

Response: “[M]odern Commerce Clause jurisprudence has ‘identified three broad categories of activity that Congress may regulate under its commerce power.’” United States v. Morrison, 529 U.S. 598, 608 (2000) (quoting United States v. Lopez, 514 U.S. 549, 558 (1995)). Congress may regulate (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, and (3) activities that substantially affect interstate commerce. Id. at 609. “[T]he scope of the interstate commerce power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.” Id. at 608 (quoting Lopez, 514 U.S. at 557) (internal quotation marks omitted). For example, the Commerce Clause does not give Congress the power to regulate intrastate, “noneconomic, violent criminal conduct based solely on that conduct’s aggregate effect on interstate commerce.” Id. at 617.

Furthermore, “[t]he power to *regulate* commerce presupposes the existence of commercial activity to be regulated.” National Federation of Independent Business v. Sebelius, 567 U.S. 519, 550 (2012). The commerce power does not permit Congress to compel individuals who are not active in commerce “to *become* active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce.” *Id.* at 552.

**13. What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?**

Response: The United States Supreme Court has held that governmental classifications based on race, nationality, and alienage “are inherently suspect and subject to close judicial scrutiny.” Graham v. Richardson, 403 U.S. 365, 371–72 (1971). The Court has described suspect classes as “discrete and insular” minority groups, *id.* at 372, “saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process[.]” San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 28 (1973).

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

Response: The United States Constitution divides the power of the federal government among legislative, executive, and judicial branches. “[T]he system of separated powers and checks and balances established in the Constitution was regarded by the Framers as ‘a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.’” Morrison v. Olson, 487 U.S. 654, 693, (1988) (quoting Buckley v. Valeo, 424 U.S. 1 (1976)). “Yet the dynamic between and among the branches is not the only object of the Constitution’s concern.” Bond v. United States, 564 U.S. 211, 222 (2011). The structural principles secured by the separation of powers and checks and balances also protect individual liberty. *Id.*; see also Bowsher v. Synar, 478 U.S. 714, 721 (1986) (“The declared purpose of separating and dividing the powers of government, of course, was to ‘diffus[e] power the better to secure liberty.’”) (citation omitted).

**15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?**

Response: If presented with the question of whether a branch of government has exceeded its constitutional authority, I would review and apply relevant provisions of the Constitution and any binding precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit interpreting these provisions.

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

Response: A judge can and should treat all litigants with respect and dignity but should decide cases fairly and impartially without regard to personal feelings. As a United States Magistrate Judge, I carefully consider the litigants' arguments, make fair assessments of the evidence they present, and faithfully apply the law to the facts of the case without partiality to any private interest. I would continue in this practice and commitment if confirmed to serve as a United States District Judge.

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

Response: For a court to invalidate a law that is constitutional amounts to judicial interference with the duties and powers committed to the legislature. For a court to uphold a law that is unconstitutional is to leave unredressed injuries that result from legislative overreach. Both options upset and undermine the constitutional order and therefore must be avoided.

18. **From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?**

Response: I have not studied the historical developments described in this question. As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would be bound to apply the precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit when called upon to review the constitutionality of a federal statute. It would not be appropriate for me to express a personal opinion on the Supreme Court's exercise of judicial review.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." Black's Law Dictionary (11th ed. 2019) defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

20. **Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court**

**... the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.” How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?**

Response: Elected officials are required to take an oath or affirmation to support the United States Constitution in the performance of their duties. This obligation includes following the decisions of the United States Supreme Court interpreting the Constitution. As a sitting judge and judicial nominee, it would not be appropriate for me to offer further comment on the obligations of elected officials.

- 21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that’s important to keep in mind when judging.**

Response: As a sitting judge and judicial nominee, I remain mindful that the role of the court is limited to interpreting the law and applying it to the resolution of disputed matters presented in litigation. In fulfilling this role, I exercise fair and impartial judgment—not my own political will, nor any assessment of the political will of the people.

- 22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: As a United States Magistrate Judge, I am bound to apply controlling precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit, and to do so fairly and impartially, regardless of my views on the merits of those precedents. If confirmed to serve as a United States District Judge, I would continue honoring this obligation.

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

Response: None. “When rendering a sentence, the district court ‘must make an *individualized* assessment based on the facts presented.’” United States v. Carter, 564 F.3d 325, 328 (4th Cir. 2009) (quoting Gall v. United States, 552 U.S. 38, 50 (2007)). The factors the court must consider are outlined in 18 U.S.C. § 3553. Gall, 552 U.S. at 49–50. None of the factors concern the defendant’s group identity(ies). Moreover,

Section 5H1.10 of the United States Sentencing Guidelines contains a policy statement that “race, sex, national origin, creed, religion, and socioeconomic status are not relevant in the determination of a sentence.”

24. **The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition? If not, how would you define equity?**

Response: I am not familiar with the statement referenced in this question and its context. Black’s Law Dictionary (11<sup>th</sup> ed.) defines “equity” as “[f]airness; impartiality; evenhanded dealing[;]” and “[t]he body of principles constituting what is fair and right[.]”

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

Response: Black’s Law Dictionary (11<sup>th</sup> ed.) defines “equity” as “[f]airness; impartiality; evenhanded dealing[;]” and “[t]he body of principles constituting what is fair and right[.]” Black’s Law Dictionary (11<sup>th</sup> ed.) defines “equality” as “[t]he quality, state, or condition of being equal;” especially “likeness in power or political status.”

26. **Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?**

Response: The Fourteenth Amendment guarantees “equal protection of the laws.” The term “equity” does not appear in the Fourteenth Amendment, and I am not aware of any precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit that has adopted the statement listed above in Question 24 in its interpretation of the Equal Protection Clause. As a United States Magistrate Judge, I am committed to applying binding precedent to any case involving equal protection claims, and I would continue in that commitment if confirmed to serve as a United States District Judge.

27. **How do you define “systemic racism?”**

Response: “Systemic racism” has been defined as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems).” Systemic racism, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/systemic%20racism> (last visited Aug. 2, 2023).

**28. How do you define “critical race theory?”**

Response: Black’s Law Dictionary (11th ed. 2019) defines “critical race theory” as “[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities.”

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

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

**30. You worked as an “organizer” for the Service Employees International Union. What were your responsibilities in that role?**

Response: More than 20 years ago, I worked briefly for the Service Employees International Union, where I conducted outreach and meetings with union and non-union workers to discuss the benefits of union membership and engaged workers regarding union contract negotiations.

**31. The main goal of the SEIU is to increase minimum wages to \$15, do you agree that minimum wages should be increased to \$15 across the country?**

Response: More than 20 years ago, I worked for the Service Employees International Union (SEIU). At the time of my brief employment with SEIU, I did not participate in any campaign to increase the minimum wage. Since the time my brief employment with SEIU ended, I have not had any personal knowledge of SEIU’s main goals. I am generally aware of efforts to increase the federal minimum wage to \$15.00 per hour, but I have not participated in any such efforts. As a sitting judge and judicial nominee, it would not be appropriate for me to express personal opinions on matters of public policy. My role is limited to interpreting the law and applying it fairly and impartially to the resolution of disputed matters presented in cases assigned to me. My views on matters of public policy play no role in my work as a judge.

SENATOR TED CRUZ  
U.S. Senate Committee on the Judiciary

Questions for the Record for Matthew James Maddox, nominated to be United States District Judge for the District of Maryland

**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. The United States Supreme Court has recognized that the Equal Protection Clause of the Fourteenth Amendment “requires equality of treatment before the law for all persons without regard to race or color” and “proscribes all invidious racial discriminations.” Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2160–61 (2023) (cleaned up, citations omitted). Any exception to this requirement of equal protection must survive “strict scrutiny.” Id. at 2162 (citation omitted). Additionally, numerous federal statutes and provisions of state law prohibit racial discrimination in employment, education, public accommodations, and other contexts.

### 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: As a sitting judge and judicial nominee, it would not be appropriate for me to express an opinion on matters that may be the subject of litigation before me, including whether there are any unenumerated rights in the Constitution that have not yet been identified by the United States Supreme Court. The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment “guarantee[s] some rights that are not mentioned in the Constitution, but any such right must be ‘deeply rooted in this Nation’s history and tradition’ and ‘implicit in the concept of ordered liberty.’” Dobbs v. Jackson Women’s Health Org., 142 S. Ct. 2228, 2242 (2022) (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)).

### 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: I am guided by several principles in my work as a United States Magistrate Judge that would continue to guide me if I am confirmed to serve as a United States District Judge. In every case, I approach each issue presented to me with an open mind and avoid prejudgment or letting any personal opinions affect my assessment of any issue. I carefully review and meaningfully consider the arguments made by each party and consult the legal authorities cited by the parties to determine independently the extent to which they support the arguments made. I engage in rigorous and independent study of the law that applies to the issues presented to me for decision, which includes finding and reviewing relevant constitutional and statutory provisions, binding precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit, applicable decisions of other courts, and relevant sections of commonly cited treatises. I make an impartial and honest assessment of the facts and evidence presented by the parties, fairly and faithfully apply the law to the facts in the record, and render a decision based solely on that analysis. In rendering a decision in any case, I focus exclusively on resolving the controversy presented to me and support the decision with clear explanation

of my reasoning and with reference to the legal rules and authorities upon which the decision relies.

Although I have examined very many decisions of the Supreme Court as a student and practitioner of the law, and now as a judge, I have not researched the judicial philosophy of any individual Supreme Court Justice. It is important to note that my work in a trial-level court as a United States Magistrate Judge—and, if confirmed, as a United States District Judge—is significantly different from the work of the Supreme Court. I have not identified any Supreme Court Justice as having a judicial philosophy that is analogous to my own.

4. **Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an “originalist”?**

Response: Black’s Law Dictionary (11th ed. 2019) defines “originalism” as “the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted.” The United States Supreme Court has applied this interpretative canon to certain provisions of the United States Constitution, such as the Second Amendment. District of Columbia v. Heller, 554 U.S. 570, 576–77 (2008). As a United States Magistrate Judge, I have not subscribed to any particular label. I have followed the precedents of the Supreme Court and the judicial philosophy described in my response to Question 3. If confirmed to serve as a United States District Judge, I would continue to be guided by the Supreme Court when interpreting constitutional and statutory provisions.

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 (11th ed. 2019) defines “living constitutionalism” as “the doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values.” As a United States Magistrate Judge, I have not subscribed to any particular label. I have followed the precedents of the United States Supreme Court and the judicial philosophy described in my response to Question 3. If confirmed to serve as a United States District Judge, I would continue to be guided by the Supreme Court when interpreting constitutional provisions.

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: My analysis of a constitutional issue of first impression would begin with the text of the constitutional provision at issue and any United States Supreme Court and United States Court of Appeals for the Fourth Circuit precedents interpreting related, similar, or analogous constitutional provisions. If these Courts have interpreted related, similar, or analogous constitutional provisions with reference to their original public meaning, I would be guided by those precedents and adopt this approach to the provision at issue in the case before me.

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, no. However, the United States Supreme Court has decided certain constitutional issues with reference to standards observed in contemporary society. See, e.g., Atkins v. Virginia, 536 U.S. 304, 311–12 (2002) (“A claim that punishment is excessive is judged not by the standards that prevailed in 1685 . . . or when the Bill of Rights was adopted, but rather by those that currently prevail. . . . The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”) (citation omitted); Miller v. California, 413 U.S. 15, 24–25 (1973) (applying “contemporary community standards” in deciding whether material “appeals to the prurient interest[]” and is unprotected by the First Amendment on the basis of obscenity).

8. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: No. The United States Constitution is a fixed and enduring document that may be applied to circumstances that did not exist at the time of ratification. The United States Supreme Court has held that some provisions of the Constitution are understood and applied in light of contemporary standards. See, e.g., Atkins v. Virginia, 536 U.S. 304, 311–12 (2002) (“A claim that punishment is excessive is judged not by the standards that prevailed in 1685 . . . or when the Bill of Rights was adopted, but rather by those that currently prevail. . . . The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”) (citation omitted); Miller v. California, 413 U.S. 15, 24–25 (1973) (applying “contemporary community standards” in deciding whether material “appeals to the prurient interest[]” and is unprotected by the First Amendment on the basis of obscenity). However, the Constitution may only be amended through the process described in Article V.

9. **Is the Supreme Court’s ruling in Dobbs v. Jackson Women’s Health Organization settled law?**

Response: Yes. Dobbs v. Jackson Women’s Health Organization, 142 S. Ct. 2228 (2022), is a binding precedent of the United States Supreme Court.

**a. Was it correctly decided?**

Response: As a United States Magistrate Judge, I faithfully apply binding and controlling precedents of the Supreme Court and would continue to do so if confirmed as a United States District Judge. The Court’s decision in Dobbs is binding precedent, and I would apply it if confirmed as a United States District Judge. It would not be appropriate for me to comment on the merits of a decision of the Supreme Court.

10. **Is the Supreme Court’s ruling in New York Rifle & Pistol Association v. Bruen settled law?**

Response: Yes. New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022), is a binding precedent of the United States Supreme Court.

**a. Was it correctly decided?**

Response: As a United States Magistrate Judge, I faithfully apply binding and controlling precedents of the Supreme Court and would continue to do so if confirmed as a United States District Judge. The Court's decision in Dobbs is binding precedent, and I would apply it if confirmed as a United States District Judge. It would not be appropriate for me to comment on the merits of a decision of the Supreme Court.

**11. Is the Supreme Court's ruling in Brown v. Board of Education settled law?**

Response: Yes. Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), is a binding precedent of the United States Supreme Court.

**a. Was it correctly decided?**

Response: Yes. As a sitting judge and judicial nominee, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. Brown v. Board of Education of Topeka has been regarded by other nominees as an exception to this general practice because its merits are unlikely challenged or reassessed by the Court. I will join other nominees in commenting that this case was correctly decided.

**12. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: Title 18, United States Code, Section 3142(e) establishes a rebuttable presumption in favor of pretrial detention in certain cases. First, § 3142(e)(2) provides a rebuttable presumption that conditions of pretrial release will not reasonably assure community safety in cases that involve an offense listed in § 3142(f)(1) where the defendant has been convicted such an offense within the previous five years or has been released from imprisonment for such an offense within the previous five years, and the defendant committed that prior offense while on pretrial release. Offenses listed in § 3142(f)(1) include offenses eligible for the death penalty or for which the maximum term of imprisonment is life; crimes of violence, sex trafficking offenses, or controlled substance offenses for which the maximum term of imprisonment is ten years or more; offenses involving minor victims or possession, failure to register as a sex offender, or use of firearms, destructive devices, or other dangerous weapons.

Second, § 3142(e)(3) provides a rebuttable presumption that conditions of pretrial release will not reasonably assure community safety or the defendant's appearance for future court proceedings in cases where there is probable cause to believe that the defendant committed any among certain federal felonies. These felonies include controlled substances offenses for which the maximum term of imprisonment is ten years or more; use or carrying of a

firearm during and in relation to a federal crime of violence or drug trafficking crime; conspiracy to murder, kidnap, or injure a person outside the United States; acts of terrorism; human trafficking, slavery, or peonage offenses for which the maximum term of imprisonment is 20 years or more; or certain offenses involving minor victims, such as kidnapping, sex trafficking, sexual abuse, or distribution, receipt, transportation, or production of child pornography.

**a. What are the policy rationales underlying such a presumption?**

Response: The policy rationale for such a presumption is that conduct constituting certain offenses is so serious, dangerous, or harmful that a person who has engaged in such conduct likely poses a high risk of flight or community violence or is unlikely to comply with court-imposed release conditions designed to ensure community safety and the person's appearance for trial. *See, e.g., United States v. Jessup*, 757 F.2d 378, 383–84 (1st Cir. 1985), *abrogated on other grounds by United States v. O'Brien*, 895 F.2d 810 (1st Cir. 1990) (describing legislative history of the Bail Reform Act, including findings by Congress that “persons charged with major drug offenses[]” generally “pose *special* risks of flight[]”); *United States v. Famiglietti*, 548 F. Supp. 2d 398, 416 (S.D. Tex. 2008) (“The conduct of which the defendant is accused is deeply threatening to extremely important societal values, a determination that is clearly reflected in Congress’ decision to create a presumption (rebuttable) of risk of flight and of danger to the community for persons charged with possessing or trafficking in child pornography.”).

**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, certain provisions of the United States Constitution and federal statutes set various identifiable limits on what government may impose, or may require, of private institutions. For example, the Establishment and Free Exercise Clauses of the First Amendment limit government interference with the right of religious institutions to decide matters of faith, doctrine, and internal governance and employment that are essential to the institution's central mission. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060–61 (2020). The Free Exercise Clause forbids the government from restricting the practices of a religious organization because of their religious motivation unless the government action is justified by a compelling interest and is narrowly tailored to advance that interest. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). Strict scrutiny would also apply to government regulations that treat comparable secular activities more favorably than religious practices. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). Under the Religious Freedom Restoration Act, government-imposed requirements on a private, closely held corporation that substantially burden the free exercise of religion by the corporation's owners must advance a compelling governmental interest and be the least restrictive means of doing so. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705–19 (2014).

**14. Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: Government action that discriminates against religious organizations or religious people is subject to strict scrutiny and permissible only if it is narrowly tailored to advance a compelling governmental interest. See Tandon v. Newsom, 141 S. Ct. 1294, 1296 (2021); Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 533 (1993). “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.” Id. 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 United States Supreme Court held that the applicants were likely to prevail on their First Amendment claims, that denying injunctive relief would lead to irreparable injury, and that granting relief would not harm the public interest. Roman Catholic Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63, 66 (2020). The challenged regulations “single[d] out houses of worship for especially harsh treatment[.]” and were not neutral and generally applicable. Id. Therefore, the regulations were subject to strict scrutiny and permissible only if they were narrowly tailored to serve a compelling governmental interest. Id. The Court pointed out the lack of evidence that the applicants contributed to the spread of COVID-19 and the availability of “less restrictive rules” that could “minimize the risk to those attending religious services.” Id. at 67. The Court also recognized that the impairment of applicants’ free exercise of religion would constitute an irreparable injury. Id. For these reasons, the Court held that enforcement of the challenged restrictions against religious services were to be enjoined. Id. at 69.

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, 1296 (2021), applicants for injunctive relief challenged COVID-19 restrictions imposed by the State of California against at-home religious gatherings. The United States Supreme Court held that the applicants were likely to succeed on the merits of their claims under the Free Exercise Clause, that they were irreparably harmed by the infringement of their free exercise rights, and that the State failed to show that public health would be harmed by using less restrictive measures. Id. at 1297. The challenged regulations treated comparable secular activities more favorably than at-home religious exercise and therefore triggered strict scrutiny. Id. at 1296–97. The Court pointed out the lack of any finding that at-home religious exercise posed a greater risk of transmission of COVID-19 than the comparable secular activities. 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. See, e.g., Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014) (federal regulation substantially burdened the constitutionally protected religious exercise of the owners of a closely held corporation by requiring the corporation to provide insurance coverage for contraceptive methods that violated the owners' sincerely held religious beliefs); Kennedy v. Bremerton School District, 142 S. Ct. 2407 (2022) (school district burdened football coach's free exercise rights by suspending his employment for engaging in private prayers on the field after football games); 303 Creative LLC v. Elenis, 143 S. Ct. 2298 (2023) (First Amendment prohibits state from forcing a website designer to create expressive designs speaking messages that are inconsistent with her religious beliefs).

18. **Explain your understanding 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), a Colorado-based bakery challenged the decision of the Colorado Civil Rights Commission that the bakery violated a Colorado antidiscrimination statute by refusing for religious reasons to create a cake for the wedding of a same-sex couple. The United States Supreme Court held that the Commission violated the Free Exercise Clause's requirement of religious neutrality by demonstrating hostility toward the bakery owner's sincere religious beliefs and treating him differently than other bakers who had objected to creating certain cakes on secular grounds.

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. "Only beliefs rooted in religion are protected by the Free Exercise Clause." Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 713 (1981). But the religious belief need only be a sincere and honest conviction. Id. at 716; Frazee v. Illinois Dep't of Emp. Sec., 489 U.S. 829, 834 (1989). A person is not required to comply with "the commands of a particular religious organization[]" "to claim the protection of the Free Exercise Clause[.]" Id.

- a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." Fulton v. City of Philadelphia, Pennsylvania, 141 S. Ct. 1868, 1876 (2021) (quoting Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 714 (1981)). It is not for the courts to decide whether certain religious beliefs are "mistaken or insubstantial." Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 725 (2014). The "narrow function" of the court is to determine whether the asserted beliefs are honest and sincere. Id.

**b. Can courts decide that anything could constitute an acceptable “view” or “interpretation” of religious and/or church doctrine?**

Response: “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” Fulton v. City of Philadelphia, Pennsylvania, 141 S. Ct. 1868, 1876 (2021) (quoting Thomas v. Review Bd. of Ind. Emp’t Sec. Div., 450 U.S. 707, 714 (1981)). It is not for the courts to decide whether certain religious beliefs are “mistaken or insubstantial.” Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 725 (2014). The “narrow function” of the court is to determine whether the asserted beliefs are honest and sincere. Id.

**c. Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: As a sitting judge and judicial nominee, it would not be appropriate for me to state the official position of the Catholic Church with respect to abortion.

**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 United States Supreme Court held that the ministerial exception to judicial enforcement of employment laws barred adjudication of the Catholic school teachers’ employment discrimination claims. The ministerial exception is grounded in the Religion Clauses of the First Amendment. Our Lady of Guadalupe School v. Morrissey-Berru, 140 S. Ct. 2049, 2060–61 (2020). These provisions limit government interference with the right of religious institutions to decide matters of faith, doctrine, and internal governance that are essential to the institution’s central mission. Id. This rule requires courts “to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.” Id. at 2060. The Court reasoned that if religious institutions were deprived of “the authority to select, supervise, and if necessary, remove a minister without interference by secular authorities[.] . . . a wayward minister’s preaching, teaching, and counseling could contradict the church’s tenets and lead the congregation away from the faith.” Id. at 2060–61. The Court recognized that “a variety of factors may be important[.]” in determining whether a particular position falls within the ministerial exception, but the focus of this inquiry is on “what the employee does.” Id. at 2063–64. It is not necessary for a position to carry the title “minister” or any similar title to fall within the ministerial exception, given that different religious institutions do not use such titles in the same ways. Id.

The Court concluded that the teaching positions at issue in this case fell within the ministerial exception because they involved performance of “vital religious duties[.]” such as providing instruction in religion, guiding students “toward the goal of living their lives in accordance with the faith[.]” praying and attending religious services with students, and preparing students for participation in religious activities. Id. at 2066. “When a school



with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, 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.* at 2069. Therefore, the courts were forbidden from adjudicating the employment discrimination claims brought by the teachers in this case. *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 United States Supreme Court held that the City's refusal to contract with Catholic Social Services ("CSS") to provide foster care services, unless it agreed to certify same-sex couples as foster parents, violated the First Amendment. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021). The Court held that the City's actions "burdened CSS's religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs." *Id.* at 1876. The City's refusal to contract with CSS was initially based on a provision in the City's standard foster care contract requiring the foster care agency to provide services to prospective foster parents regardless of their sexual orientation. *Id.* at 1878. This provision incorporated a system of individual exemptions available at the Commissioner's sole discretion, which rendered the policy not generally applicable and therefore subject to strict scrutiny. *Id.* at 1878–79. The Court determined that the City's asserted interests were insufficiently precise to identify specific harms of granting an exemption for religious claimants and, once properly narrowed, inadequate to satisfy strict scrutiny. *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 United States Supreme Court determined that the requirement in the State's tuition assistance program that eligible private schools be "nonsectarian" violated the Free Exercise Clause of the First Amendment because this requirement disqualified religious schools from a generally available benefit based solely upon the schools' religious character. *Carson v. Makin*, 142 S. Ct. 1987, 1997 (2022). The Court reasoned that the Free Exercise Clause "protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.'" *Id.* at 1996 (quoting *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439, 450 (1988)). Government action that operates to penalize religious exercise in the manner of the challenged tuition assistance program is subject to "the strictest scrutiny[.]" and the State's program could not survive strict scrutiny. *Id.* (quoting *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2257 (2020)). The State's interest against violating the Establishment Clause did not justify the exclusion of religious schools from the "otherwise generally available public benefit" due to their religious exercise. *Id.* at 1998. The Court held that for the program to operate in a way to permit religious schools

to benefit would not violate the Establishment Clause. Id.

**23. Please explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: The United States Supreme Court held that the Free Exercise and Free Speech Clauses of the First Amendment protected a public school football coach from reprisal for engaging in brief personal religious observances after football games. *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022). The school’s policy forbidding the coach’s brief prayer was not neutral toward religion; nor was the policy generally applicable, considering that other members of the coaching staff were permitted to engage in personal activities after football games. Id. at 2422–23. Additionally, the Court determined that the coach’s prayers were not ordinarily within the scope of his duties as a coach and therefore were private speech and not government speech. Id. at 2424. Therefore, the coach established that the school district infringed upon his free speech and free exercise rights, which shifted the burden to the school district to show its restrictions on the coach’s rights “serve[d] a compelling interest and [were] narrowly tailored to that end.” Id. at 2426. The Court rejected the school district’s argument that its suspension of the coach was necessary to avoid a violation of the Establishment Clause. Id. at 2426–28. The coach’s private expression did not amount to the school district coercing its students to participate in the religious observance. Id. at 2429–32.

**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 his concurring opinion, Justice Gorsuch opined that the County bore the burden under the Religious Land Use and Institutionalized Persons Act to demonstrate a compelling interest in applying its modern septic system requirement to the Swartzentruber Amish community who objected to the ordinance on sincere religious grounds. *Mast v. Fillmore Cnty., Minnesota*, 141 S. Ct. 2430, 2432 (2021) (Gorsuch, J., concurring). Citing *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), Justice Gorsuch opined that a general interest in sanitation would not suffice and that the County would need to establish a compelling interest in denying the Swartzentruber Amish households an exception to the septic system requirement. Id. Justice Gorsuch opined that the County and the lower courts needed to give due weight to exemptions enjoyed by other groups, such as campers, and offer a compelling reason for denying the same flexibility to the Swartzentruber Amish households. Id. In Justice Gorsuch’s view, the County and the lower courts also gave insufficient weight to rules in other jurisdictions that permitted use of gray water disposal systems to which the Swartzentruber Amish did not have a religious objection. 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: Title 18, United States Code, Section 1507 provides criminal penalties for picketing, parading, using a sound-truck or similar device, or “resort[ing] to any other demonstration” in or near a building or residence occupied or used by a judge “with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing” the judge. In Cox v. State of Louisiana, 379 U.S. 559, 563 (1965), the United States Supreme Court upheld a state statute modeled upon § 1507, holding that it did not “infringe upon the constitutionally protected rights of free speech and free assembly.” As a sitting judge and judicial nominee, it would not be appropriate for me to offer an advisory opinion on whether or how § 1507 or any other federal criminal law would apply to specific events.

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: Yes.

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 United States Constitution commits the authority to make political appointments to the President with the advice and consent of the Senate. As a sitting judge and judicial nominee, it would not be appropriate for me to comment on the propriety of considering skin color or sex in making political appointments. I am not aware of any case addressing the constitutionality of considering skin color or sex in making political appointments. If this issue were presented in a case assigned to me, I would handle the matter as I handle every other case that comes before me as a judge. I would approach the issue with an open mind, carefully consider the arguments presented by the parties, rigorously research and review any binding and persuasive authorities on the topic, and apply the relevant law to the facts of the case.

**30. Is the criminal justice system systemically racist?**

Response: I understand the question of whether the criminal justice system is systemically racist to be a question of public policy and a topic of academic study and popular discourse. As a United States Magistrate Judge and in my prior work as a federal prosecutor, I have sought to treat each criminal defendant and investigative subject impartially and without any bias in every criminal case I have handled, and I would continue to do so if confirmed to serve as a United States District Judge.

**31. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: I understand the question of whether Congress should act to change the number of justices on the Supreme Court to be a question of public policy and a topic of popular discourse. As a sitting judge and judicial nominee, it would not be appropriate for me to express any personal opinion I have on the matter.

**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 United States Supreme Court has engaged in textual and historical analyses of the Second Amendment to determine its public understanding in the period of its ratification and held that the provision guarantees the individual right to possess and carry firearms for self-defense. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010); New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (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: The United States Supreme Court has invalidated laws banning handgun possession in the home, prohibitions against rendering lawful firearms in the home operable for the purpose of immediate self-defense, and requirements that an applicant for an unrestricted license to carry a firearm in public demonstrate a special need for self-protection distinguishable from that of the general community. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010); New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022). The Court has held that firearm regulations are permissible if they are “consistent with this Nation’s historical tradition of firearm regulation.” Id. at 2126. The historical inquiry necessary to assess the constitutionality of contemporary firearm regulations “will often involve reasoning by analogy[.]” Id. at 2132. Central to this analogical inquiry are considerations of “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified. . . .” Id. at 2133.

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

Response: Yes. The United States Supreme Court has held that the right to possess a firearm for self-defense is an individual right that is fundamental to the Nation’s scheme of ordered liberty and secured by the Second Amendment and the Fourteenth Amendment. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 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: The United States Supreme Court has described the Second Amendment’s guarantee as an “unqualified command[.]” and stated that the standard for assessing the constitutionality of firearm regulations “accords with how [the Court] protect[s] other constitutional rights.” New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111, 2130 (2022). The individual right to possess and carry firearms 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, Illinois, 561 U.S. 742, 780 (2010)).

**37. Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: To my knowledge, the United States Supreme Court has not issued an opinion specifically comparing the level of protection afforded to the right to own a firearm to the level of protection afforded to the right to vote. The Court has stated that the standard for assessing the constitutionality of firearm regulations “accords with how [the Court] protect[s] other constitutional rights.” New York State Rifle & Pistol Association, Inc. v. Bruen, 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: Article II of the United States Constitution commits responsibility for law enforcement to the executive branch of government. See, e.g., United States v. Nixon, 418 U.S. 683, 693 (1974) (“[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case[.]”) (citations omitted); Wayte v. United States, 470 U.S. 598, 607 (1985) (“[The] broad discretion [retained by a prosecutor] rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review.”). As a member of the judicial branch and judicial nominee, it would not be appropriate for me to comment on the law enforcement policies or priorities set by any executive department or agency.

**39. Explain your understanding of what distinguishes an act of mere ‘prosecutorial discretion’ from that of a substantive administrative rule change.**

Response: Prosecutorial discretion generally refers to authority and discretion committed to a prosecutor’s office in deciding whether and how to prosecute a crime. The United States Supreme Court has recognized that, “[i]n our system, . . . the decision whether or not to prosecute [an offense], and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutor’s] discretion[.]” provided “the prosecutor has probable cause to believe that the accused committed [the] offense. . . .” Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978). See also United States v. Nixon, 418 U.S. 683, 693 (1974) (“[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case[.]”) (citations omitted); Wayte v. United States, 470 U.S. 598, 607 (1985) (“In our criminal justice system, the Government retains ‘broad discretion’ as to whom to prosecute.”). I understand a substantive administrative rule change to be a change in regulations promulgated by an administrative agency.

**40. Does the President have the authority to abolish the death penalty?**

Response: The death penalty is available for certain offenses under 18 U.S.C. § 3591. Repeal of federal statutes is a prerogative of Congress, not of the President.

**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 & Human Services, 141 S. Ct. 2485 (2021), associations of real estate agents and rental property managers challenged the authority of the Centers for Disease Control and Prevention (“CDC”) to impose a nationwide moratorium on evictions of any tenants who lived in a county experiencing high levels of COVID–19 transmission and who made certain declarations of financial need. The district court entered judgment in favor of the plaintiffs but initially stayed its judgment pending appeal. The United States Supreme Court ultimately vacated the stay of judgment because the plaintiffs demonstrated a virtual certainty of success on the merits of their argument that CDC exceeded its statutory authority under § 361 of the Public Health Service Act and the balance of equities weighed against depriving them of the judgment in their favor.

42. **Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?**

Response: As a sitting judge and judicial nominee, it would not be appropriate for me to comment on matters committed to the policies and discretion of a prosecutor's office or that may be the subject of pending or future litigation. As a former federal prosecutor, I am aware that, in § 1-7.400 of Justice Manual, Department of Justice personnel are generally directed not to comment on the nature and progress of a criminal investigation before charges are publicly filed. The same policy permits confirmation of an investigation if necessary to reassure the community that the matter is being investigated.

43. **You previously worked for the Association of Community Organizations for Reform Now (ACORN). What was your position?**

Response: My best recollection is that, nearly 23 years ago, I worked for ACORN for approximately two months speaking with community residents about joining the association. My employment with the association ended almost 23 years ago.

44. **To your knowledge ACORN ever submit hundreds of thousands of fraudulent voter registration forms?**

Response: I do not have any personal knowledge of ACORN submitting any number of fraudulent voter registration forms. My only knowledge of any fraudulent conduct by employees of the association is from news reports made several years after my brief employment with the association ended in 2000.

45. **In your time as an organizer, did you ever personally witness, observe, or partake in any attempts to break local, state, or federal law?**

Response: No.

46. **Were you aware that ACORN's founder, Dale Rathke, was alleged to have embezzled over \$1 million dollars during your time you worked for the organization?**

Response: No. I was not aware at the time of my brief employment with ACORN in 2000, nor am I presently aware, of any allegations of embezzlement or any other criminal conduct by ACORN's founder.

47. **Please explain your understanding of the incident regarding Project Veritas' 2009 undercover expose of ACORN. Please be specific.**

Response: Through news reports published several years after my brief employment with ACORN in 2000 ended, I became aware of an undercover expose alleging then-recent

misconduct or unlawful activity by employees of the association. That is the extent of my understanding of the matter.

**48. Why did ACORN ultimately disband?**

Response: I have no personal knowledge of whether or why ACORN disbanded. While researching my employment history earlier this year to complete my Senate questionnaire for judicial nominees, I discovered information indicating that the association is now defunct in the United States.

**49. You clerked for Judge Gerald Bruce Lee of the United States District Court for the Eastern District of Virginia in 2011-2012 and Judge Andre Davis of the United States Court of Appeals for the Fourth Circuit in 2014-2015. Both Judges for whom you clerked have publicly advocated against mandatory minimum sentences. Specifically, Judge Davis once stated, “[t]he wholesale use of mandatory minimum sentences has been the source of immeasurable injustice in this country.”**

**a. Do you agree with Judge Davis?**

Response: I am not familiar with the above statement attributed to Judge Davis or its context. Therefore, I cannot be certain that I have a full understanding of the statement. As a former federal prosecutor, I am aware that certain federal statutes mandate minimum terms of imprisonment for certain offenses, and I prosecuted a number of cases involving such offenses. In cases where an individual was convicted of such an offense, I sought prison sentences of at least the minimum mandated by statute. If confirmed to serve as a United States District Judge, I would enter sentences in accordance with 18 U.S.C. § 3553 and the statutes prescribing minimum and maximum penalties for the offenses of conviction in every criminal case assigned to me. I would also consider applicable provisions of the United States Sentencing Guidelines, including the advisory sentencing guidelines range. Any prison sentence that falls below the minimum sentence or exceeds the maximum sentence mandated by statute would be beyond the authority of a sentencing judge.

**b. If Judge Davis is incorrect, please explain why.**

Response: Please see my response to Question 49.a.

**50. Do you agree there should be uniformity in sentencing?**

Response: In general, uniformity is an appropriate goal and factor in sentencing. Title 18, United States Code, Section 3553(a) requires the sentencing court to consider, among other factors, “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct[.]”

**a. Is it unjust for two hypothetical defendants to receive different sentences for the same crime?**



Response: Not necessarily. Title 18, United States Code, Section 3553(a) requires the court to consider both “the nature and circumstances of the offense” and “the history and characteristics of the defendant” when imposing a sentence. Significant differences between the criminal histories of two defendants, for example, may call for different sentences—even if the crimes for which they are being sentenced were substantially the same. The sentencing court is required to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in [18 U.S.C. § 3553(a)(2).]” 18 U.S.C. § 3553(a). The purposes of sentencing outlined in § 3553(a)(2) include the need “to protect the public from further crimes of the defendant” and “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). Two different defendants may, in the judgment of the sentencing court, require different penalties to deter them from further crimes or to provide needed correctional treatment in an effective manner, even if they have committed the same offense.

**Senator John Kennedy  
Questions for the Record**

**Judge Matthew Maddox**

**1. Please describe your judicial philosophy. Be as specific as possible.**

Response: I am guided by several principles in my work as a United States Magistrate Judge that would continue to guide me if I am confirmed to serve as a United States District Judge. In every case, I approach each issue presented to me with an open mind and avoid prejudgment or letting any personal opinions affect my assessment of any issue. I carefully review and meaningfully consider the arguments made by each party and consult the legal authorities cited by the parties to determine independently the extent to which they support the arguments made. I engage in rigorous and independent study of the law that applies to the issues presented to me for decision, which includes finding and reviewing relevant constitutional and statutory provisions, binding precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit, applicable decisions of other courts, and relevant sections of commonly cited treatises. I make an impartial and honest assessment of the facts and evidence presented by the parties, fairly and faithfully apply the law to the facts in the record, and render a decision based solely on that analysis. In rendering a decision in any case, I focus exclusively on resolving the controversy presented to me and support the decision with clear explanation of my reasoning and with reference to the legal rules and authorities upon which the decision relies.

**2. Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

Response: The United States Constitution is a fixed and enduring document that may be applied to circumstances that did not exist at the time of ratification. The United States Supreme Court has held that some provisions of the Constitution are understood and applied in light of contemporary standards. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 311–12 (2002) (“A claim that punishment is excessive is judged not by the standards that prevailed in 1685 . . . or when the Bill of Rights was adopted, but rather by those that currently prevail. . . . The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”) (citation omitted); *Miller v. California*, 413 U.S. 15, 24–25 (1973) (applying “contemporary community standards” in deciding whether material “appeals to the prurient interest[]” and is unprotected by the First Amendment on the basis of obscenity). However, the Constitution may only be amended through the process described in Article V.

**3. Should a judge look beyond a law’s text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

Response: As a United States Magistrate Judge and if confirmed to serve as a United States District Judge, my interpretation of any provision of law would begin with its text and structure. I would also consult any binding precedents of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit interpreting the same provision. If the meaning of a provision is clear from its text (including any relevant statutory definitions) and any binding precedent, then I would apply that meaning. See Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) (“In statutory interpretation disputes, a court’s proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. . . . Where . . . that examination yields a clear answer, judges must stop.”) (citations omitted).

If the law is susceptible to multiple reasonable interpretations and there is no binding precedent on the meaning of the law, then I would consult persuasive authorities on the issue, including the decisions of other judges in the district and circuit as well as courts outside the circuit. I would also apply canons of interpretation endorsed by the Supreme Court and the Fourth Circuit for use in interpreting similar or analogous provisions of law. If this process does not yield a clear answer, I would consult legislative history to aid discernment of the legislative intent and purpose to the extent doing so is consistent with Supreme Court guidance. See Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005) (“Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.”).

**4. Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

Response: I am not aware of any precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit addressing the question of whether a president’s statements are part of legislative history. As a sitting judge and judicial nominee, it would be improper for me to express an opinion on this issue because it may be the subject of litigation before me. If confronted with this issue in litigation, I would carefully and impartially consider the parties’ arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply any binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

**5. What First Amendment restrictions can the owner of a shopping center place on private property?**

Response: The United States Supreme Court has held that “the First and Fourteenth Amendments safeguard the rights of free speech and assembly by limitations on state action, not on action by the owner of private property used non-discriminatorily for private purposes only.” Lloyd Corp., Ltd. v. Tanner, 407 U.S. 551, 567 (1972). In Lloyd, the Court determined that a private shopping center did not assume or exercise “municipal functions or power” such that it was open for public use and that it did not lose its private character merely by inviting the general public “to use it for designated

purposes.” Id. at 569. “The essentially private character of a store and its privately owned abutting property does not change by virtue of being large or clustered with other stores in a modern shopping center.” Id.; see also PruneYard Shopping Ctr. v. Robins, 447 U.S. 74, 81 (1980) (examining Lloyd). Therefore, the general public was not entitled to exercise First Amendment rights within the privately owned and operated shopping center. Lloyd, 407 U.S. at 570.

**6. Are non-citizens unlawfully present in the United States entitled to a right of privacy?**

Response: I am not aware of any precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit addressing whether or the extent to which non-citizens unlawfully present in the United States are entitled to a right of privacy. The U.S. Supreme Court has stated that “the people” protected by several constitutional guarantees include non-citizens “who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990). These guarantees include due process of law and equal protection of the law, as well as certain other rights under the First, Fourth, Fifth, and Ninth Amendments. See, e.g., id.; Plyler v. Doe, 457 U.S. 202, 210–12 (1982); Bridges v. Wixon, 326 U.S. 135, 148 (1945). The Court has also held that several of the foregoing constitutional provisions “have penumbras, formed by emanations from those guarantees that help give them life and substance[,]” and create constitutionally protected “zones of privacy.” Griswold v. Connecticut, 381 U.S. 479, 484 (1965).

As a sitting judge and judicial nominee, it would be improper for me to comment further on this issue because it may be the subject of litigation before me. If confronted with this issue in litigation, I would carefully and impartially consider the parties’ arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

**7. Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?**

Response: The United States Supreme Court has stated that “the people” protected by the Fourth Amendment include non-citizens “who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990). The Supreme Court and United States Court of Appeals for the Fourth Circuit have recognized an exception to the warrant requirement in the Fourth Amendment for searches and seizures at the nation’s borders to protect sovereign interests in territorial integrity, national security, preventing the entry of “unwanted persons and effects,” regulating the collection of duties, and preventing the entry of contraband. United States v. Aigbekaen, 943 F.3d 713, 720 (4th Cir. 2019) (citing United States v. Flores-Montano,

541 U.S. 149, 153 (2004), and United States v. Montoya de Hernandez, 473 U.S. 531, 537 (1985)). “[T]his ‘border search’ exception to the warrant requirement is broad, [but] it is not boundless.” Id. Although government agents may conduct “routine” searches and seizures at the border “without a warrant or any individualized suspicion[.]” conducting an intrusive and nonroutine search at the border without a warrant requires “individualized suspicion of an offense that bears some nexus to the border search exception’s purposes. . . .” Id. at 720–21 (citing United States v. Kolsuz, 890 F.3d 133, 137, 143 (4th Cir. 2018)).

As a sitting judge and judicial nominee, it would be improper for me to comment further on this issue because it may be the subject of litigation before me. If confronted with this issue in litigation, I would carefully and impartially consider the parties’ arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

**8. At what point is a human life entitled to equal protection of the law under the Constitution?**

Response: In Dobbs v. Jackson Women’s Health Organization, 142 S. Ct. 2228 (2022), the United States Supreme Court returned the authority to regulate abortion to the people and their elected representatives. I am not aware of any precedent of the Supreme Court or United States Court of Appeals for the Fourth Circuit addressing the point at which a human life is entitled to equal protection of the law. I understand this question to be a subject of debate and discourse within our society. As a sitting judge and judicial nominee, it would be improper for me to express an opinion on the question because it may be the subject of litigation before me. If confronted with this issue in litigation, I would carefully and impartially consider the parties’ arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

**9. A federal district court judge in Washington, DC recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health*.**

**a. Do you agree?**

Response: I am not familiar with the statement referenced in this question, and I am not aware of any precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit addressing the issue. In Dobbs v. Jackson Women’s Health Organization, 142 S. Ct. 2228 (2022), the U.S. Supreme Court held that there is no fundamental right to abortion without addressing whether the Thirteenth Amendment may provide a basis for such a right. As a sitting judge and judicial nominee, it would be improper for me to express an opinion on the question because it may be the subject of litigation before me. If

confronted with this issue in litigation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

**b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?**

Response: Lower courts are required to follow controlling precedent of the United States Supreme Court.

**10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?**

Response: A federal district court is required to follow precedent set by the court of appeals of the circuit within which it sits and the United States Supreme Court.

**11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?**

Response: The United States Supreme Court has rejected a facial constitutional challenge to a state statute requiring government issued photo identification to vote and held that the state's interests in detecting and deterring voter fraud, improving and modernizing election procedures, and promoting public confidence were substantial enough to justify the limitation imposed on voters. Crawford v. Marion Cnty. Election Bd., 553 U.S. 181 (2008). As a sitting judge and judicial nominee, it would be improper for me to comment further on this question because it may be the subject of litigation before me. If confronted with this issue in litigation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

**12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.**

Response: The United States Supreme Court has held that the Second Amendment guarantees the individual right to possess and carry firearms for self-defense. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010); New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022). In Bruen, the Court held that firearm regulations are permissible if they are "consistent with this Nation's historical tradition of firearm

regulation.” Id. at 2126. The historical inquiry necessary to assess the constitutionality of contemporary firearm regulations “will often involve reasoning by analogy[.]” Id. at 2132. Central to this analogical inquiry are considerations of “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified. . . .” Id. at 2133. If confronted with a constitutional challenge to a firearm regulation, I would carefully and impartially consider the parties’ arguments, fairly assess any evidence presented, review and faithfully apply Bruen and any other binding precedents on the matter, and render a decision based solely upon an application of the law to the facts of the case.

**13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.**

**a. How many factors are necessary to provide a special justification for overturning precedent?**

Response: I am not aware that the United States Supreme Court has ever required that any particular number of factors be satisfied to justify overturning a past decision. The Court “will not overturn a past decision unless there are strong grounds for doing so.” Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31, 138 S. Ct. 2448, 2478 (2018). The Court has stated that overturning a precedent “is a serious matter[.]” and “is not a step that should be taken lightly.” Dobbs v. Jackson Women’s Health Org., 142 S. Ct. 2228, 2264 (2022). Several factors have been considered by the Court in deciding whether to overturn a past decision, including: the quality of the reasoning in the past decision; the workability of the rule established in the past decision; its consistency with other related decisions; any disruptive effect the past decision has had on other areas of the law; the nature of the error made in the past decision; and the extent to which there has been reliance on the past decision. See Dobbs v. Jackson Women’s Health Org., 142 S. Ct. 2228, 2265 (2022); Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31, 138 S. Ct. 2448, 2478–79 (2018).

**b. Is one factor alone ever sufficient?**

Response: Please see my response to Question 13.a.

**14. Please explain the difference between judicial review and judicial supremacy.**

Response: Black’s Law Dictionary (11th ed. 2019) defines “judicial review” as “[a] court’s power to review the actions of other branches or levels of government; esp., the courts’ power to invalidate legislative and executive actions as being unconstitutional.” Black’s Law Dictionary (11th ed. 2019) defines “judicial supremacy” as “[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states.”

**15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?**

Response: The meaning of the Ninth Amendment is fixed and enduring. Please see my response to Question 2.

**16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?**

Response: The Ninth Amendment provides, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” In his concurring opinion in McDonald v. City of Chicago, Justice Thomas identified the Ninth Amendment as an “obvious example[]” of a provision in the Bill of Rights that “prevent[s] federal interference in state affairs and [is] not readily construed as protecting rights that belong to individuals.” 561 U.S. 742, 851 n.20 (2010) (Thomas, J., concurring in part and concurring in judgment). If confronted with an issue in litigation requiring an interpretation of the Ninth Amendment, I would carefully and impartially consider the parties’ arguments, engage in rigorous research to identify any judicial precedents on the matter, and faithfully apply precedent.

**17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?**

Response: If confronted with an issue in litigation requiring an interpretation of the Ninth Amendment, I would carefully and impartially consider the parties’ arguments, engage in rigorous research to identify any judicial precedents on the matter, and faithfully apply precedent. I expect that the Bill of Rights would be informative because the Ninth Amendment expressly references rights enumerated in other provisions of the United States Constitution, including the Bill of Rights.

**18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?**

Response: If confronted with an issue in litigation requiring an interpretation of the Ninth Amendment, I would carefully and impartially consider the parties’ arguments, engage in rigorous research to identify any judicial precedents on the matter, and faithfully apply precedent. I expect that Founding-era history would be useful because the United States Supreme Court has engaged in historical analyses in its interpretation of various other provisions in the Bill of Rights to determine how these provisions were understood by the public during the period of ratification. See, e.g., Crawford v. Washington, 541 U.S. 36 (2004) (Confrontation Clause); District of Columbia v. Heller, 554 U.S. 570 (2008) (Second Amendment); Town of Greece, N.Y. v. Galloway, 572 U.S. 565 (2014) (Establishment Clause).

**19. The First, Second, Fourth, Ninth, and Tenth Amendments reference “the people.”**

**a. Who is included within the meaning of “the people”?**



Response: The United States Supreme Court’s textual analysis of the term in United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990), “suggests that [it] refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” The Court cited this analysis in District of Columbia v. Heller, 554 U.S. 570, 579–80 (2008), where it stated that the term “unambiguously refers to all members of the political community[.]”

**b. Is the term’s meaning consistent in each amendment?**

Response: Please see my response to Question 19.a.

**20. Does ‘the people’ capture non-citizens or illegal immigrants within the meaning of any amendment?**

Response: Please see my responses to Questions 6, 7, and 19.a.

**21. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?**

Response: In Washington v. Glucksberg, 521 U.S. 702, 720 (1997), the United States Supreme Court cautioned that “the utmost care” must be exercised when the Court is asked to recognize fundamental liberty interests not enumerated in the Bill of Rights, “lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court[.]” The Court held that the nation’s history, legal traditions, and practices provide “crucial ‘guideposts for responsible decisionmaking[.]’” in this area, which “direct and restrain [the Court’s] exposition of the Due Process Clause.” Id. at 721. The Court specifically identified “two primary features” of its substantive due process analysis: (1) that “the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition[] . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed[.]” and (2) that the asserted fundamental liberty interest must be carefully described. Id. at 720–21 (internal quotation marks and citations omitted).

**22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?**

Response: The United States Supreme Court held four years after the Fourteenth Amendment’s adoption “that the Privileges or Immunities Clause protects only those rights ‘which owe their existence to the Federal government, its National character, its

Constitution, or its laws,’ . . . and that the fundamental rights predating the creation of the Federal Government were not protected by the Clause[.]” McDonald v. City of Chicago, Ill., 561 U.S. 742 (2010) (citing Slaughter-House Cases, 83 U.S. 36, 76, 79 (1872)). In McDonald, the Court declined to reconsider that interpretation of the Privileges or Immunities Clause. Id. at 758. If confronted with this issue in litigation, I would carefully and impartially consider the parties’ arguments and evidence, review and apply binding precedents on the issue, and render a decision based solely upon that analysis.

**23. Is the right to terminate a pregnancy among the ‘privileges or immunities’ of citizenship?**

Response: Please see my response to Question 22. In Dobbs v. Jackson Women’s Health Organization, 142 S. Ct. 2228, 2248 (2022), the United States Supreme Court held “that the Fourteenth Amendment does not protect the right to an abortion.” The Court continued in a footnote, “That is true regardless of whether we look to the Amendment’s Due Process Clause or its Privileges or Immunities Clause.” Id. at 2248 n.22.

**24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?**

Response: The United States Supreme Court held that “[w]hen a court reviews an agency’s construction of the statute which it administers,” it is confronted, first, with “the question whether Congress has directly spoken to the precise question at issue.” Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 842 (1984). “If the intent of Congress is clear,” the court and the agency “must give effect the unambiguously expressed intent of Congress.” Id. at 842–43. “[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.” Id. at 843. “[A] court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.” Id. at 844.

More recently, the Court has expressly recognized and applied the major questions doctrine. In certain “extraordinary cases[.]” the “history and the breadth” of the authority asserted by the agency, “and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority.” West Virginia v. Environmental Protection Agency, 142 S. Ct. 2587, 2608 (2022). In such cases, the agency must provide “more than a merely plausible textual basis for the agency action” and identify “‘clear congressional authorization’ for the power it claims.” Id. at 2609 (internal quotation marks and citations omitted); see also Biden v. Nebraska, 143 S. Ct. 2355, 2375 (2023). Congress is expected “to speak clearly when authorizing an agency to exercise powers of vast economic and political significance.” National Federation of Independent Business v. Department of Labor, Occupational Safety & Health Administration, 142 S. Ct. 661, 665 (2022) (quoting Alabama Association of Realtors v. Department of Health & Human Services, 141 S. Ct. 2485, 2489 (2021)). The Court has required “exceedingly clear” statutory language if Congress intends “to significantly alter the balance between federal and state power and

the power of the Government over private property.” Sackett v. Environmental Protection Agency, 143 S. Ct. 1322, 1341 (2023) (quoting United States Forest Service v. Cowpasture River Preservation Association, 140 S. Ct. 1837, 1849–50 (2020)).

I understand that the Supreme Court has granted certiorari in Loper Bright Enterprises v. Raimondo (No. 22-451) and may, in that case, consider overturning or limiting its decision in Chevron. As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would continue to apply faithfully the controlling precedents of the Supreme Court, including any forthcoming decisions.

**25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?**

Response: Please see my response to Question 24. The Administrative Procedure Act (“APA”) “establishes the procedures federal administrative agencies use for ‘rule making,’” Perez v. Mortgage Bankers Association, 575 U.S. 92, 95 (2015), as well as “the full extent of judicial authority to review executive agency action for procedural correctness,” F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 513 (2009). “The APA contains a variety of constraints on agency decisionmaking—the arbitrary and capricious standard being among the most notable.” Perez, 575 U.S. at 106. The APA permits a court to set aside “agency action that is arbitrary or capricious[.]” when an agency fails to “examine the relevant data and articulate a satisfactory explanation for its action.” Fox Television Stations, 556 U.S. at 513. In making this assessment, “a court is not to substitute its judgment for that of the agency, . . . and should uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned[.]” Id. at 513–14 (internal quotation marks and citations omitted).

**26. How does the Constitution limit the powers of Congress? Please provide examples.**

Response: The United States Constitution divides the power of the federal government among legislative, executive, and judicial branches. Article I of the Constitution vests legislative power in Congress. Specific legislative powers of Congress are outlined in Section 8 of Article I and in other articles and amendments to the Constitution. The powers of Congress are limited to those enumerated in the Constitution. National Federation of Independent Business v. Sebelius, 567 U.S. 519, 534–35 (2012) (citing Gibbons v. Ogden, 9 Wheat. 1, 195 (1824), and McCulloch v. Maryland, 4 Wheat. 316, 405 (1819)); see also Murphy v. National Collegiate Athletic Association, 138 S. Ct. 1461, 1476 (2018) (“The Constitution confers on Congress not plenary legislative power but only certain enumerated powers.”). Importantly, Congress’s enumerated powers include the power to make laws that are “necessary and proper for carrying into [e]xecution” other powers enumerated in Article I. Art. I, § 8, cl. 18. The United States Supreme Court has interpreted the Necessary and Proper Clause “to give Congress great latitude in exercising its powers[.]” National Federation of Independent Business, 567 U.S. at 537.

The Tenth Amendment to the Constitution provides that “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.” Specific limits on the power of Congress are provided in Section 9 of Article I, including prohibitions against suspending the writ of habeas corpus and granting titles of nobility. Further limits on the power of Congress are provided in the Bill of Rights and other constitutional amendments. The First Amendment, for example, forbids Congress from making any law “respecting an establishment of religion[.] . . . 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.”

**27. Please describe the modern understanding and limits of the Commerce Clause.**

Response: “[M]odern Commerce Clause jurisprudence has ‘identified three broad categories of activity that Congress may regulate under its commerce power.’” United States v. Morrison, 529 U.S. 598, 608 (2000) (quoting United States v. Lopez, 514 U.S. 549, 558 (1995)). Congress may regulate (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, and (3) activities that substantially affect interstate commerce. Id. at 609. “[T]he scope of the interstate commerce power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.” Id. at 608 (quoting Lopez, 514 U.S. at 557) (internal quotation marks omitted). Furthermore, “[t]he power to *regulate* commerce presupposes the existence of commercial activity to be regulated.” National Federation of Independent Business v. Sebelius, 567 U.S. 519, 550 (2012). The commerce power does not permit Congress compel individuals who are not active in commerce “to *become* active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce.” Id. at 552.

**28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.**

Response: The Commerce Clause does not give Congress the power to regulate intrastate, “noneconomic, violent criminal conduct based solely on that conduct’s aggregate effect on interstate commerce.” United States v. Morrison, 529 U.S. 598, 617 (2000).

**29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.**

Response: The United States Supreme Court has applied similar analyses to due process claims against the federal government under the Fifth Amendment and due process claims against state actors under the Fourteenth Amendment. See Rosales-Mireles v. United States, 138 S. Ct. 1897, 1906 (2018) (“The ‘shock the conscience’ standard typically is employed when determining whether governmental action violates due process rights under the Fifth and Fourteenth Amendments.”). In his concurring opinion

in Malinski v. New York, Justice Frankfurter stated that the Due Process Clauses of the Fifth and Fourteenth Amendments have “the same meaning.” 324 U.S. 401, 415 (1945) (Frankfurter, J., concurring).

- 30. In *Gundy v. United States*, 588 U.S. \_\_\_\_ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If this issue is presented for decision in a case assigned to me, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit.

- 31. Please describe how courts determine whether an agency’s action violated the Major Questions doctrine.**

Response: Please see my response to Question 24.

- 32. Please describe your understanding and limits of the anti-commandeering doctrine.**

Response: The anticommandeering doctrine recognizes that Congress lacks “the power to issue direct orders to the governments of the States.” Murphy v. National Collegiate Athletic Association, 138 S. Ct. 1461, 1476 (2018). “While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’ instructions.” New York v. United States, 505 U.S. 144, 162 (1992). “[E]ven where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.” Id. at 166.

- 33. Does the meaning of the Eighth Amendment change over time? Why or why not?**

Response: The United States Supreme Court has stated that the Eighth Amendment “draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society.” Kennedy v. Louisiana, 554 U.S. 407, 419, modified, 554 U.S. 945 (2008) (quoting Trop v. Dulles, 356 U.S. 86, 101 (1958) (plurality opinion)). The Court has explained that the standard of extreme cruelty under the Eighth Amendment “is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.” Id. (quoting Furman v. Georgia, 408 U.S. 238, 382 (1972) (Burger, C.J., dissenting)).

- 34. Is the death penalty constitutional?**

Response: The United States Supreme Court has held that “the death penalty is not invariably unconstitutional,” but it “must be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution.” Kennedy v. Louisiana, 554 U.S. 407, 420, modified, 554 U.S. 945 (2008) (internal quotation marks and citations omitted).

**35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?**

Response: The United States Supreme Court has recognized that, “[i]n our system, . . . the decision whether or not to prosecute [an offense], and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutor’s] discretion[.]” provided “the prosecutor has probable cause to believe that the accused committed [the] offense. . . .” Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978). As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If the issue of how prosecutorial discretion applies to criminal contempt of Congress is presented in a case assigned to me, I would faithfully apply the precedent of the Supreme Court and the United States Court of Appeals for the Fourth Circuit.

**36. Please describe which presidential aides, if any, are entitled to “absolute immunity” from congressional subpoenas.**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If this issue is presented for decision in a case assigned to me, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit.

**37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?**

Response: Please see my response to Question 5.

**38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If this issue is presented for decision in a case assigned to me, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit.

**39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?**

Response: The Supremacy Clause in Article VI of the United States Constitution provides that state courts are bound by the U.S. Constitution and federal laws notwithstanding any contrary provision in the constitution or laws of the state. The U.S. Supreme Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." Ridgway v. Ridgway, 454 U.S. 46, 54 (1981) (quoting Herb v. Pitcairn, 324 U.S. 117, 125–26 (1945)). In this regard, the Supreme Court's power "is to correct wrong judgments, not to revise opinions." Herb, 324 U.S. at 126. "[I]f the same judgment would be rendered by the state court after [the Supreme Court] corrected its views of federal laws, [the Supreme Court's] review could amount to nothing more than an advisory opinion." Id. Thus, the adequate and independent state grounds doctrine provides that the Supreme Court "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." Coleman v. Thompson, 501 U.S. 722, 729 (1991).

**40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.**

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If this issue is presented for decision in a case assigned to me, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit.

**41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?**

Response: To the best of my knowledge, the United States Supreme Court has not cited a textual source for the different standards of review for determining whether state laws or regulations violate constitutional rights. The standards of review developed from the Court's decisions. See, e.g., Nebbia v. People of New York, 291 U.S. 502, 537 (1934) ("So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose."); Skinner v. State of Okl. ex rel. Williamson, 316 U.S. 535, 541 (1942) ("[S]trict scrutiny of the classification which a State makes in a sterilization law is essential, lest unwittingly or otherwise invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws."); Craig v. Boren, 429 U.S. 190, 197 (1976) ("[S]tatutory classifications that distinguish between males and females are subject to scrutiny under the Equal Protection Clause. . . . To withstand constitutional challenge, previous cases establish that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.") (internal quotation marks and citation omitted).

**42. Please describe the legal basis that allows federal courts to issue universal injunctions.**

Response: An injunction is an equitable form of relief available under Rule 65 of the Federal Rules of Civil Procedure. “[A] federal district court has wide discretion to fashion appropriate injunctive relief in a particular case.” Richmond Tenants Org., Inc. v. Kemp, 956 F.2d 1300, 1308 (4th Cir. 1992) (citing Lemon v. Kurtzman, 411 U.S. 192, 200 (1973)). However, “[a]n 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). “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.” Trump v. Int’l Refugee Assistance Project, 582 U.S. 571, 579 (2017). As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If a universal injunction is sought in a case assigned to me, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit, carefully consider the parties’ arguments, and render a decision based solely on the application of the law to the facts of the case.

**43. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.**

Response: Early in my career in the law, I had the great fortune and honor of serving as law clerk to two exceptional federal judges: the Honorable Gerald Bruce Lee, United States District Judge (Ret.); and the Honorable Andre M. Davis, United States Circuit Judge (Ret.). These judges have been my greatest professional inspiration. In my service as a United States Magistrate Judge, I seek to emulate the thoroughness, clarity, and warmth Judge Davis consistently exhibited in his opinions. I learned the critical importance of preparation for hearings from both judges. From my careful study of Judge Lee’s work, I came to view hearings as opportunities for a judge to convey how carefully and seriously he has considered each party’s position and to give both parties confidence in the fairness of the process. If confirmed to serve as a United States District Judge, I would continue seeking to emulate the judicial excellence demonstrated in the work of Judge Lee and Judge Davis.



**Questions from Senator Thom Tillis**  
**for Matthew James Maddox Nominee to be United States District Judge for the District of**  
**Maryland**

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

Response: Yes. As a sitting United States Magistrate Judge, I approach each issue with an open mind, seriously and carefully consider the parties' arguments, research and impartially interpret the applicable law, and render a decision applying the law to resolve the issue. If confirmed to serve as a United States District Judge, I would continue in this practice and commitment. My personal views play no role in this process.

**2. What is judicial activism? Do you consider judicial activism appropriate?**

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." Judicial activism is not appropriate. Please see my response to Question 1.

**3. Do you believe impartiality is an aspiration or an expectation for a judge?**

Response: Impartiality is an expectation for a judge. As a United States Magistrate Judge, I carefully consider the litigants' arguments, make fair assessments of the evidence they present, and faithfully apply the law to the facts of the case without partiality to any private interest. I would continue in this practice and commitment if confirmed to serve as a United States District Judge.

**4. Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

Response: No.

**5. Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

Response: Faithfully interpreting the law may sometimes result in an undesirable outcome. Whether an outcome may be undesirable, and what, if any, outcome I may personally prefer, is not a consideration in my decision-making as a judge. As a United States Magistrate Judge, I am bound to interpret and apply the law in accordance with binding precedent of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit irrespective of my personal views or preferences. I will continue in this commitment if confirmed to serve as a United States District Judge.

**6. Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

Response: No. My role as a United States Magistrate Judge is limited to interpreting the law and applying it fairly and impartially to the resolution of disputed matters presented in cases assigned to me. Any views I may hold regarding matters of public policy play no role in my work as a judge. I would continue in this practice and commitment if confirmed to serve as a United States District Judge.

**7. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: As a sitting United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would faithfully apply the binding precedents of the United States Supreme Court recognizing Second Amendment rights to possess and carry firearms for self-defense. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010); New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022). In Bruen, the Court held that firearm regulations are permissible if they are “consistent with this Nation’s historical tradition of firearm regulation.” Id. at 2126. The historical inquiry necessary to assess the constitutionality of contemporary firearm regulations “will often involve reasoning by analogy[.]” Id. at 2132. Central to this analogical inquiry are considerations of “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified. . . .” Id. at 2133. If confronted with a constitutional challenge to a firearm regulation, I would carefully and impartially consider the parties’ arguments, fairly assess any evidence presented, review and faithfully apply Bruen and any other binding precedents on the matter, and render a decision based solely upon an application of the law to the facts of the case.

**8. How would you evaluate a lawsuit challenging a Sheriff’s policy of not processing handgun purchase permits?**

Response: Please see my response to Question 7. As a United States Magistrate Judge, I am required to follow binding precedent of United States Supreme Court and United States Court of Appeals for the Fourth Circuit, and I would continue to do so if confirmed to serve as United States District Judge. I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge or is the subject of pending litigation.

**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 are entitled to qualified immunity from suit for discretionary functions “unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.” District of Columbia v. Wesby, 138 S. Ct. 577, 589 (2018) (internal quotation marks and citation omitted). “‘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.” *Id.* (internal quotation marks and citation omitted). As a United States Magistrate Judge, I am required to follow binding precedent of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit in the application of the qualified immunity doctrine, and I would continue to do so if confirmed to serve as a United States District Judge.

**10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?**

Response: Any personal beliefs I have on matters of public policy have no relevance to my decision-making as a judge. As a United States Magistrate Judge, I am required to follow binding precedent of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit in the application of the qualified immunity doctrine, and I would continue to do so if confirmed to serve as a United States District Judge. It would not be appropriate for me to express any personal opinion regarding matters of public policy or matters that may come before me as a judge or may be the subject of pending litigation.

**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: Any personal beliefs I have regarding any area of the United States Supreme Court’s jurisprudence have no relevance to my decision-making as a judge. As a United States Magistrate Judge, I am required to follow binding precedent of the Supreme Court and United States Court of Appeals for the Federal Circuit on matters of patent eligibility, and I would continue to do so if confirmed to serve as a United States District Judge. Canon 3 of Code of Conduct for United States Judges precludes me from expressing any personal opinion regarding matters of public policy or matters that may come before me as a judge or may be the subject of pending litigation.

**13. Do you believe the current patent eligibility jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court’s ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: Please see my response to Question 12. Title 35, United States Code, Section 101 defines the subject matter eligible for patent protection: “Whoever invents or discovers any

new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent....” The United States Supreme Court has held that “this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). “Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.” *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 71 (2012) (citation omitted). “The Court has recognized, however, that too broad an interpretation of this exclusionary principle could eviscerate patent law[]” because “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Id.*

The Court thus set forth a two-step framework for “distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217 (citing *Mayo*, 566 U.S. at 77). First, the court is required to “determine whether the claims at issue are directed to one of those patent-ineligible concepts[.]” *Sanderling Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 702 (Fed. Cir. 2023) (quoting *Alice*, 573 U.S. at 217). Second, if the claims are directed to patent-ineligible concepts, the court “search[es] for an ‘inventive concept’ by ‘consider[ing] the elements of each claim both individually and as an ordered combination to determine whether the additional elements transform the nature of the claim into a patent-eligible application[.]’” *Id.* (*Alice*, 573 U.S. at 217).

As a United States Magistrate Judge, I am required to follow binding precedent of the Supreme Court and United States Court of Appeals for the Federal Circuit on matters of patent eligibility, and I would continue to do so if confirmed to serve as a United States District Judge.

**14. 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: During law school, I completed courses in intellectual property and media law, each of which involved study of copyright law. I participated in a research project on the educational fair use doctrine as a student fellow of the Yale Law School Information Society Project. If any issue relating to copyright law is presented for decision in a case assigned to me as a United States Magistrate Judge or if I am confirmed to serve as a United States District Judge, I would engage in rigorous research of the matter and fairly and impartially apply the relevant law to the facts of the case, including any controlling precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit.

**b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

Response: During law school, I completed a course in intellectual property, which involved study of the Digital Millennium Copyright Act (DMCA). If any issue relating to the DMCA is presented for decision in a case assigned to me as a United States Magistrate Judge or if I am confirmed to serve as a United States District Judge, I would engage in rigorous research of the matter and fairly and impartially apply the relevant law to the facts of the case, including any controlling precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit.

**c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?**

Response: During law school, I completed courses in intellectual property, First Amendment law, and media law, which involved study of 47 U.S.C. § 230 and issues relating to intermediary liability for online service providers. As a student fellow of the Yale Law School Information Society Project, I conducted research and contributed to comments on proposed rulemaking by the Federal Communications Commission that involved issues of intermediary liability. If any issue relating to intermediary liability is presented for decision in a case assigned to me as a United States Magistrate Judge or if I am confirmed to serve as a United States District Judge, I would engage in rigorous research of the matter and fairly and impartially apply the relevant law to the facts of the case, including any controlling precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit.

**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: During law school, I completed courses in intellectual property and trademark law, First Amendment law, and media law. As a student fellow of the Yale Law School Information Society Project, I participated in a research project on the educational fair use doctrine and contributed to comments on proposed rulemaking by the Federal Communications Commission, which involved First Amendment issues. If any free speech or intellectual property issues are presented for decision in cases assigned to me as a United States Magistrate Judge or if I am confirmed to serve as a United States District Judge, I would engage in rigorous research of the matter and fairly and impartially apply the relevant law to the facts of the case.

**15. 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 reported that 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: As a sitting United States Magistrate Judge and judicial nominee, Canon 3 of Code of Conduct for United States Judges precludes me from expressing any personal opinion I have regarding what role Congressional intent “should” have when deciding how to apply a law to the facts of a case. Any personal opinion I have on the matter would play no role in my decision-making as a judge. On matters of statutory interpretation, I am required to follow binding precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit.

The Supreme Court has made clear that “legislative history is not the law.” Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612, 1631 (2018). As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, my interpretation of any federal statute would begin with its text and structure. I would also consult any binding precedents of the Supreme Court or the Fourth Circuit interpreting the same provision. If the meaning of a provision is clear from its text (including any relevant statutory definitions) and any binding precedent, then I would apply that meaning. See Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) (“In statutory interpretation disputes, a court’s proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. . . . Where . . . that examination yields a clear answer, judges must stop.”) (citations omitted). There would only be need to consult legislative history to discern Congressional intent if the meaning of the statute’s text were unclear or ambiguous and there was no binding precedent on the statute’s meaning. See Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005) (“Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.”).

- 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 I am presented with an issue relating to the Digital Millennium Copyright Act on which the United States Copyright Office has provided advice and analysis, I would engage in rigorous research of the matter and fairly and impartially apply the law in deciding the issue, including any controlling precedents of the United States Supreme Court and United States Court of Appeals for the Fourth

Circuit. In Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 842–44 (1984), the Supreme Court held that, where a statute is ambiguous or unclear as to a particular issue, a court must defer to the “reasonable interpretation” of the statute made by an agency to which responsibility for administering the statute has been delegated. Notably, however, the Court has also “held that Chevron deference applies only when a court interprets a rule issued pursuant to an agency’s authority to ‘make rules carrying the force of law.’ . . . When the agency’s interpretation doesn’t create law, courts must decide whether to afford that interpretation Skidmore deference.” Carlton & Harris Chiropractic, Inc. v. PDR Network, LLC, 982 F.3d 258, 264 (4th Cir. 2020) (quoting Gonzales v. Oregon, 546 U.S. 243, 255 (2006)). Under Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944), what weight to give an agency’s judgment “will depend 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.”

- 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 judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to express any personal opinion on this issue or any other matter that may be presented to me for decision or is the subject of pending litigation. Any personal opinion I have on the matter would play no role in my decision-making as a judge. If this issue is presented in any case assigned to me, I would engage in rigorous research of the matter and fairly and impartially apply the relevant law in deciding the issue, including any controlling precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit.

**16. 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: As a sitting United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I am required to interpret and apply federal statutes as they are written and have been interpreted in controlling decisions of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit. Any opinion I have on how well suited the Digital Millennium Copyright Act is to today’s digital environment is not relevant and would play no role in my decision-

making. That question is a matter of public policy to be addressed by the political branches of government.

- 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 16.a.

- 17. 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 this practice.**

- a. Do you see “judge shopping” and “forum shopping” as a problem in litigation?**

Response: I have not studied the incidence or prevalence of “judge shopping” and “forum shopping.” These practices are commonly viewed as improper. As a general matter, in the District of Maryland, cases are randomly assigned to judges sitting in the respective Northern and Southern Divisions in which cases are filed. See L.R. 301.4 & 501.1 (D. Md. 2023). Multiple judges sit in each of these divisions.

- b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?**

Response: Judges have the responsibility to abide by the canons of judicial conduct and all administrative and court rules that govern the courts in which they preside.

- 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.” I have not studied any practices by courts to attract a particular type of case or litigant through proactive steps or the ethical or legal implications of any such practices. As a United States Magistrate Judge, I have not engaged in any such practices, nor would I engage in such practices if confirmed to serve as a United States District 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 17.c.



- 18. 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 United States Magistrate Judge and judicial nominee, Canon 3 of Code of Conduct for United States Judges precludes me from expressing any personal opinion on the practices and procedures of another court.

- 19. 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 responses to Questions 17.a and 18.

SCOTT J. CRICHTON  
ASSOCIATE JUSTICE, LOUISIANA SUPREME COURT

Personal Address:  
430 Fannin Street · Shreveport, LA 71101  
(318) 227-3711 · [scott@justicecrichton.com](mailto:scott@justicecrichton.com)

June 29, 2023

The Honorable Richard Durbin  
Chairman  
Senate Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Lindsey Graham  
Ranking Member  
Senate Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Re: Jerry Edwards, Jr., Candidate for Article III Nomination/  
Western District of Louisiana

Dear Chairman Durbin and Ranking Member Graham:

I currently serve as an Associate Justice of the Louisiana Supreme Court and previously served for 24 years as a Louisiana state district court judge in Caddo Parish. For five years, I served as an adjunct faculty member of Tulane Law School, teaching courses in appellate advocacy and advanced legal ethics, and for the past 30 years I have regularly taught continuing legal education courses for lawyers and judges, primarily speaking on the subjects of ethics and professionalism. Finally, I am a Republican and a conservative jurist. It is through this lens of judge and teacher that I write to recommend Jerry Edwards, Jr., for your consideration as a federal judge for the Western District of Louisiana.

I consider myself fortunate to have known Jerry both professionally and personally for nearly two decades. In 2005, a judicial colleague and I selected Jerry to serve as our law clerk for a one-year term. Conducting research, providing analysis and drafting recommendations on both criminal and civil pre-trial motions, Jerry's work was stellar. He stands out as the best young lawyer to serve in that position during my trial court tenure. Jerry was thereafter hired by Blanchard,

Walker, O'Quin and Roberts, a century-old, premier Shreveport Louisiana law firm. Serving in the litigation section, Jerry handled state and federal personal injury and business law cases, primarily on the defense side; he also handled municipal and regulatory matters—some transactional and others requiring a hearing and advocacy for the client. Jerry's worthy contribution to the firm is evidenced by his advancement from associate to partner, then to the firm's management committee and ultimately to the position of Director.

Most recently, Jerry has served as Assistant United States Attorney for the Western District for four years, with the past 14 months in a managerial position of First Assistant U.S. Attorney. He has defended the United States of America in civil suits and prosecuted individuals charged with federal/felony level crimes.

Jerry's contributions outside of the office are also noteworthy. He frequently presents continuing education classes for lawyers and judges. His materials are consistently comprehensive and his presentation is always a worthy academic contribution. Also of particular interest is Jerry's commitment to our community, serving on the Board of Directors for the Volunteers of America North Louisiana and the Community Foundation.

Finally, but importantly, Jerry was appointed to the nine-member Judiciary Commission of Louisiana, a constitutionally constituted committee which investigates ethical complaints against judges, conducts trials, and recommends sanctions to the Louisiana Supreme Court. He was elected by his peers to Vice Chair and then Chair during his third and fourth years. He currently serves on the Character and Fitness Panel for the Louisiana Supreme Court Committee on Bar Admissions.

I can confidently say that Jerry Edwards' impeccable credentials and accomplishments qualify him for service in the federal judiciary. He is an enormously worthy candidate for the federal bench and I enthusiastically recommend him. Please contact me at [scrichton@lasc.org](mailto:scrichton@lasc.org) or [scott@justicecrichton.com](mailto:scott@justicecrichton.com) or my cell phone (318) 510-8000 should you have any additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "SCOTT CRICHTON", with a stylized flourish at the end.

Scott J. Crichton

CHIEF JUSTICE BERNETTE JOSHUA JOHNSON (RET.)

#6 PARK TIMBERS DRIVE  
NEW ORLEANS, LOUISIANA 70131  
JOHNSONBERNETTEJ@GMAIL.COM  
504-756.7591

June 27, 2023

Sent via E-mail only

The Honorable Richard Durbin  
Chairman  
Senate Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Lindsey Graham  
Ranking Member  
Senate Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Re: Jerry Edwards, Jr. nominee to the U.S. District Court, Western District of Louisiana

Dear Chairman Durbin and Ranking Member Graham:

I am writing this letter to express my enthusiastic support for Jerry Edwards, Jr. who has been nominated by President Joseph Biden to serve as a federal judge for the Western District of Louisiana. I have been a lawyer in Louisiana since 1969. I served as a civil trial judge for 10 years and then I was elected to serve on the Louisiana Supreme Court in 1994. I became the Court's 25<sup>th</sup> Chief Justice in 2013.

I have known Jerry Edwards for more than 15 years and have watched his professional development. He has had a successful career as a trial lawyer beginning with one of the outstanding law firms in Shreveport and then moved to the U.S. Attorney's office for the Western District of Louisiana where he gained vast experience overseeing Criminal and Civil litigation. All of this will serve him well in his new role as a federal judge. Jerry has devoted much of his time to professional development. He has assumed leadership roles and has been instrumental in many professional organizations in our state.

What has impressed me most about Jerry is his dedication and service to the various committees that serve the Judiciary. When I met him, he was serving as a member of the Louisiana Judiciary Commission which receives complaints and disciplines judges, when necessary. I can assure you that most young lawyers would rather avoid the difficult task of scrutinizing the conduct of judges. He served as a member of the Commission with distinction and went on to serve as its Chair. He has also served on the Committee on Bar Admissions and now serves on the Louisiana Judicial Campaign Oversight Committee. All of these committees are crucial to a well-functioning Judiciary.

Jerry is conscientious and has the intellect, character, and temperament to make an outstanding federal judge. I recommend him without reservation. If you have any specific questions about his character or qualifications, please do not hesitate to contact me.

Sincerely,



Chief Justice Bernette J. Johnson (ret.)

July 11, 2023

The Honorable Richard Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Lindsay Graham  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Re: Nomination of Philip Hadji to the U.S. Court of Federal Claims

Dear Chairman Durbin and Ranking Member Graham:

We write to express our enthusiastic support for the nomination, and confirmation, of Philip Hadji to the United States Court of Federal Claims. We are all current and former Department of the Navy Office of the General Counsel (Navy OGC) attorneys and worked with Mr. Hadji at some point during his time in Navy OGC from 2011 to the present.

As an attorney for the Navy, Mr. Hadji distinguished himself through his thoughtful legal advice, dependability, and diligence. His experience includes the full-spectrum of complex government procurement and contract law issues including bid protest litigation, litigation of contract claims, coordination of False Claims Act litigation, fraud investigations, suspension and debarment, contract awards, contract performance issues, energy contracts, IT infrastructure and service contracts, and data rights issues.

Mr. Hadji has served in a variety of positions throughout the Navy OGC enterprise including in supervisory positions, which gives him a broad perspective of the complex legal issues that the Department of Defense regularly handles. He has supported the Naval Facilities Engineering and Expeditionary Warfare Command, the Navy Acquisition Integrity Office, the Naval Information Warfare Systems Command, and the Naval Litigation Office.

We find Mr. Hadji to have the requisite qualifications and personal characteristics to be an excellent judge. We enthusiastically recommend that the Committee support Mr. Hadji's nomination to the United States Court of Federal Claims. We are confident that he will serve the Judiciary with distinction as he has over his long tenure as an attorney with the Department of the Navy.

\*The opinions expressed within this letter are those of the signatories and not those of the Department of Defense, the Department of the Navy, or any other affiliated entities of those names signed below.

Respectfully submitted,

Amanda Belanger  
James Benoit  
Jessica Briesacker  
David Coker

Eli Corin  
Liza Craig  
Tuwana Cummings  
Toya Davis  
Keith Dunn  
Laura Fibiger  
Libbi Finelsen  
Eric Flores  
Bradley Garner  
Denise Gault  
Rachel Goldstein  
Catherine Horan  
Erin Hernandez  
Catherine Kessmeier  
David Koman  
Jennifer Ivey-Crickenberger  
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Kerry Hotopp  
Detria Hutchinson  
Robert Manley  
John McHugh  
Per Midboe  
Merideth Mendenhall  
Mark Munson  
Isaac Natter  
Brian Novak  
Cheryl Parker  
Barry Plunkett  
Ross Phillips  
Kenneth Rich  
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 Errol G. Williams

July 2, 2023

To Whom It May Concern:

As the Executive Director of Boys Hope Girls Hope of Greater New Orleans, I am honored to provide this letter of recommendation for Brandon Long who has been nominated as a Federal Judge for the U.S. District Court for the Eastern District of Louisiana.

Boys Hope Girls Hope of Greater New Orleans, an affiliate of Boys Hope Girls Hope, Inc., is a Jesuit-founded academically driven children's home organization whose mission is: "To nurture and guide motivated young people in need to become well-educated, career-ready men and women for others." Boys Hope Girls Hope operates two homes that serve young people who should and would go to college if they were in a more stable and supportive home environment. Boys Hope Girls Hope of Greater New Orleans becomes that home environment, sending each scholar to private, college-preparatory schools and supporting them through high school and college graduation with full-time, live-in, college-educated residential staff.

Brandon Long joined our Board of Directors in September of 2019. Born and raised in the New Orleans area, Brandon was familiar with the work of Boys Hope Girls Hope from attending high school with some of our scholars. Brandon's deep ties to the New Orleans community, and his investment in the success of our community and our organization, have made him a perfect fit for our Board.

Brandon has been a tremendous advocate for providing opportunities to young men and women in need. Brandon's guidance and support enables our scholars to pursue their dreams of obtaining a great education and setting their lives on a trajectory towards successful careers, stable families, and being productive members of their communities. More recently, Brandon's passion for the work of Boys Hope Girls Hope has extended to his family – his wife, an architect, is assisting in an important renovation project at one of our homes.

Brandon's commitment to making New Orleans a better place for families to raise their children is evident in both his professional and personal work. Boys Hope Girls Hope is honored to have Brandon Long on our Board of Directors and we are honored to advocate for his appointment as a federal Judge due to his great work with our organization.

Sincerely,

Chuck Roth  
 Executive Director

P.O. Box 19307  
 New Orleans, LA 70179  
 504-484-7744

[bhghnola.org](http://bhghnola.org)

**The Honorable Stanwood Richardson Duval, Jr.**  
**United States District Court Judge**  
**For the Eastern District of Louisiana (1994-2017)**  
**410 Henry Clay Avenue**  
**New Orleans, Louisiana 70118**

July 1, 2023

The Honorable Richard J. Durbin, Chairman  
The Honorable Lindsey O. Graham, Ranking Member  
United States Senate Committee on the Judiciary  
Washington, D.C. 20510

Dear Senator Durbin and Senator Graham,

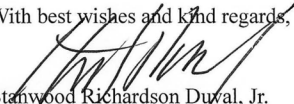
It is my privilege to recommend to you Brandon S. Long for appointment to the bench as a United States District Court Judge for the Eastern District of Louisiana. When I served on that bench, Mr. Long appeared before me a number of times. His performance as an attorney was compelling and profoundly professional. He clearly has lived up to his academic potential as demonstrated with his graduating *cum laude* with a Juris Doctor degree from Duke University School of Law as well as a Staff Editor of the *Duke Law Journal*.

Since I retired from the bench, I have had occasion to meet him socially. He is a person who exemplifies the best of the legal profession by virtue of his intelligence, demeanor, and absolute rectitude. He is a very engaging person, and I am certain that he will have a superb judicial temperament. He will also approach each case with no preconceived notions and utmost fairness. Brandon will assiduously apply the law and the facts and will adhere to precedent.

On a personal note, his service on the Board of Directors for Boys Hope Girls Hope speaks of his commitment to the community. Indeed, this endeavor was one embraced by my fellow colleague on the bench, the late Honorable Adrian Duplantier. Moreover, he is a wonderful father to his two boys aged 8 and 7 which further demonstrates his dedication to the future of the United States.

Brandon is as uniquely balanced, personable, intelligent, and conscientious as any potential nominee should be. I am absolutely certain that if he is fortunate enough to become a federal district court judge, he will make us all immensely proud.

With best wishes and kind regards,

  
Stanwood Richardson Duval, Jr.  
Retired United States District Court Judge  
for the Eastern District of Louisiana



July 7, 2023

The Honorable Richard Durbin, Chairman  
The Honorable Lindsey Graham, Ranking Member  
U.S. Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

**RE: Letter of Support from Former AUSA Colleagues of Brandon S. Long,  
Nominee for the U.S. District Court for the Eastern District of Louisiana**

Dear Chairman Durbin and Ranking Member Graham:

We write to convey our strong support for the swift confirmation of our former colleague, Brandon S. Long, to the United States District Court for the Eastern District of Louisiana. We are a bipartisan group of former Assistant U.S. Attorneys in Washington, D.C. and New Orleans who worked with Mr. Long under both Democratic and Republican administrations. We know and respect Mr. Long for his commitment to the rule of law, steady temperament, keen intellect, and dedication to public service. If confirmed, he will make an excellent District Court judge.

During his nearly 13 years with the U.S. Department of Justice, Mr. Long has consistently demonstrated the good judgment, tireless work ethic, and devotion to fairness and equality that reflect the highest standards of Department of Justice attorneys. Starting in 2010 as an AUSA in Washington, D.C., Mr. Long handled a variety of cases in the Superior Court for the District of Columbia and before the District of Columbia Court of Appeals – ranging from misdemeanor street crimes to some of the city’s most violent felonies. He earned respect from his peers for his exhaustive investigations and exacting legal analysis. And while he maintained a full and active docket, he was never too busy to cover a hearing for a colleague or help think critically about a thorny issue of law. To opposing counsel, Mr. Long was a vigorous yet open-minded and respectful advocate, committed to ensuring that justice was discharged fairly and dispassionately.

Similarly, since 2014, Mr. Long has handled an array of federal criminal matters as an AUSA in the Eastern District of Louisiana involving violent gang members, unscrupulous public officials, opioid dealers, and insurance fraudsters. He has served with distinction as a line prosecutor in the Financial Crimes Unit and the Narcotics Unit, and in leadership positions as the office’s Opioid Coordinator and Deputy Chief of Narcotics. Through his collegiality, dependability, and innate sense of justice, Mr. Long has earned the respect and trust of his colleagues and the local legal community.

We have no doubt that Mr. Long will bring many of these same attributes to his judicial service on behalf of the citizens of the Eastern District of Louisiana. We wholly endorse his confirmation.

Yours, Very Respectfully,

James A. Petkun  
Former Assistant U.S. Attorney, District of Columbia

Uma Amuluru  
Former Assistant U.S. Attorney, District of Columbia

Tom Bednar  
Former Assistant U.S. Attorney, District of Columbia

Christopher Bruckmann  
Former Assistant U.S. Attorney, District of Columbia

Justin Dillon  
Former Assistant U.S. Attorney, District of Columbia

Jeff Cook  
Former Assistant U.S. Attorney, District of Columbia

Julia K. Evans  
Former Assistant U.S. Attorney, Eastern District of Louisiana

Andrew Finkelman  
Former Assistant U.S. Attorney, District of Columbia

John P. Fucetola  
Former Assistant U.S. Attorney, District of Columbia

John Hill  
Former Assistant U.S. Attorney, District of Columbia

Peter Lallas  
Former Assistant U.S. Attorney, District of Columbia

Sharan E. Lieberman  
Former Assistant U.S. Attorney, Eastern District of Louisiana

Christopher Macchiaroli  
Former Assistant U.S. Attorney, District of Columbia

David B. Misler  
Former Assistant U.S. Attorney, District of Columbia

Clare Pozos  
Former Assistant U.S. Attorney, District of Columbia

David Rubenstein  
Former Assistant U.S. Attorney, District of Columbia

David C. Rybicki  
Former Assistant U.S. Attorney, District of Columbia

Holly Shick  
Former Assistant U.S. Attorney, District of Columbia

David Howard Sinkman  
Former Assistant U.S. Attorney, Eastern District of Louisiana

William J. Quinlan, Jr.  
Former Assistant U.S. Attorney, Eastern District of Louisiana

Rizwan A. Qureshi  
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Ephraim (Fry) Wernick  
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10603 Dogwood Farm LN  
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July 3, 2023

Honorable Dick Durbin, Chair  
Honorable Lindsey Graham, Ranking Member  
United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Brandon Long, Nominee for United States Federal Judge for the Eastern District of Louisiana

Dear Senators Durbin and Graham:

I am writing in support of Brandon Long's nomination for the position of United States Federal District Judge for the Eastern District of Louisiana. I formerly served in a number of positions at the Department of Justice including Acting Deputy Attorney General, Chief of Staff to the Attorney General, Deputy Assistant Attorney General in both the Civil and Criminal Divisions and as an Assistant U.S. Attorney in the Southern District of New York and the Northern District of Georgia. I also practiced as a white-collar criminal defense attorney for many years.

I met Brandon just after he graduated from law school when he joined King & Spalding as an associate. As a partner with this law firm, I supervised Brandon's work in a number of significant matters from mid-2005 through the spring 2009. I was able to observe Brandon develop as a practicing attorney including his work on a major, nation-wide "bet-the-company" criminal investigation; a significant prosecution involving one of the largest accounting firms in the U.S.; and a pro bono appeal of an individual's life sentence.

Brandon is a hard-working, detail-oriented attorney who, even at the early stages of his career, exhibited solid judgment, an open mind and a commitment to professionalism. He demonstrated superior legal skills, high standards of civility, and the ability to work with people as well as to vigorously serve his clients' interests.

Significantly, Brandon thereafter decided to devote his career to public service. This began with his work as an Assistant U.S. Attorney in Washington, D.C. He then returned to his home city – New Orleans. He has been extraordinarily successful as an Assistant U.S. Attorney which has included extensive trial work and service in a leadership role, both of which will serve him well in the critically important role of a federal district judge.

Importantly, Brandon has a deep knowledge and understanding of the issues facing the New Orleans community and has represented the U.S. Attorney's Office in community outreach initiatives. He is a man of principle who throughout his career has demonstrated a commitment to the rule of law. I believe strongly that, as a federal judge, he will be objective

and will follow the law in an impartial manner. He has the courage to do what is right under the law.

Brandon has my enthusiastic endorsement for his confirmation as a federal district judge. Given his unquestioned integrity, his significant experience in both private practice and as a federal prosecutor, he is an ideal candidate for this position.

Thanks very much for considering my views regarding the nomination of Brandon Long.

Respectfully,

Gary G. Grindler

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July 11, 2023

**Via Email**

The Honorable Dick Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**Via Email**

The Honorable Lindsey Graham  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Re: *Nomination of Jerry Edwards, Jr. to the United States District  
Court for the Western District of Louisiana*

Dear Chairman Durbin and Ranking Member Graham:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Jerry Edwards, Jr., who has been nominated by the President to the United States District Court for the Western District of Louisiana. 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 Mr. Edwards is **"Well Qualified"** to serve on the United States District Court for the Western District of Louisiana.

Very truly yours,

*Ann Claire Williams*  
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*)  
Jerry Edwards, 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*)

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July 11, 2023

**Via Email**

The Honorable Dick Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**Via Email**

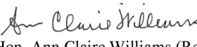
The Honorable Lindsey Graham  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Re: *Nomination of Brandon Scott Long to the United States District  
Court for the Eastern District of Louisiana*

Dear Chairman Durbin and Ranking Member Graham:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Brandon Scott Long, who has been nominated by the President to the United States District Court for the Eastern District of Louisiana. 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 Mr. Long is **"Well Qualified"** to serve on the United States District Court for the Eastern District of Louisiana.

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*)  
Brandon Scott Long (*via email*)  
ABA Standing Committee on the Federal Judiciary (*via email*)  
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary,  
Staff Counsel (*via email*)

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April 17, 2023

**Via Email**

The Honorable Dick Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**Via Email**

The Honorable Lindsey Graham  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Re: *Nomination of Magistrate Judge Matthew James Maddox to the  
United States District Court for the District of Maryland*

Dear Chairman Durbin and Ranking Member Graham:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Matthew James Maddox, who has been nominated by the President to the United States District Court for the District of Maryland. 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 Maddox is **"Well Qualified"** to serve on the United States District Court for the District of Maryland.

Very truly yours,

*Ann Claire Williams*  
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 Matthew James Maddox (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)