AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 118–29, Part 10

CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

OCTOBER 4, 2023

Serial No. J–118–2

PART 10

Printed for the use of the Committee on the Judiciary



CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

S. HRG. 118–29, Part 10

CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

OCTOBER 4, 2023

Serial No. J–118–2

PART 10

Printed for the use of the Committee on the Judiciary



www.judiciary.senate.gov
www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE
56–021 PDF WASHINGTON : 2024

COMMITTEE ON THE JUDICIARY

RICHARD J. DURBIN, Illinois, *Chair*

SHELDON WHITEHOUSE, Rhode Island
AMY KLOBUCHAR, Minnesota
CHRISTOPHER A. COONS, Delaware
RICHARD BLUMENTHAL, Connecticut
MAZIE K. HIRONO, Hawaii
CORY A. BOOKER, New Jersey
ALEX PADILLA, California
JON OSSOFF, Georgia
PETER WELCH, Vermont

LINDSEY O. GRAHAM, South Carolina, *Ranking Member*
CHARLES E. GRASSLEY, Iowa
JOHN CORNYN, Texas
MICHAEL S. LEE, Utah
TED CRUZ, Texas
JOSH HAWLEY, Missouri
TOM COTTON, Arkansas
JOHN KENNEDY, Louisiana
THOM TILLIS, North Carolina
MARSHA BLACKBURN, Tennessee

JOSEPH ZOGBY, *Chief Counsel and Staff Director*
KATHERINE NIKAS, *Republican Chief Counsel and Staff Director*

CONTENTS

OPENING STATEMENTS

	Page
Durbin, Hon. Richard J.	1
Graham, Hon. Lindsey O.	2
Hirono, Hon. Mazie K.	7
Booker, Hon. Cory A.	10
Cornyn, Hon. John	5

VISITING INTRODUCERS

Wyden, Hon. Ron, U.S. Senator from Oregon	3
prepared statement	183
Menendez, Hon. Robert, U.S. Senator from New Jersey	9
Merkley, Hon. Jeff, U.S. Senator from Oregon	4
Schatz, Hon. Brian, U.S. Senator from Hawaii	6

NOMINEES

Kasubhai, Hon. Mustafa Taher	11
Questionnaire	44
Responses to written questions	120
Additional materials	185
Kazen, Hon. John A.	12
Questionnaire	205
Responses to written questions	256
Additional material	281
Park, Hon. Shanlyn A. S.	13
Questionnaire	282
Responses to written questions	318
Additional materials	354
Semper, Jamel K.	14
Questionnaire	377
Responses to written questions	401
Additional material	438
Smith, Micah W. J.	15
Questionnaire	439
Responses to written questions	469
Additional materials	512

CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

WEDNESDAY, OCTOBER 4, 2023

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

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

Present: Senators Durbin [presiding], Whitehouse, Blumenthal, Hirono, Booker, Padilla, Ossoff, Welch, Graham, Grassley, Cornyn, Lee, Cruz, Cotton, Kennedy, Tillis, and Blackburn.

Also present: Senators Wyden, Merkley, Schatz, and Menendez.

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

Chair DURBIN. This hearing of the Senate Judiciary Committee will come to order. I'd like to take a moment to first acknowledge that this is our first full Committee hearing since the passing of our friend and colleague, Senator Dianne Feinstein, a treasured leader of the Senate and this Committee. It is a bit unreal to begin these proceedings and to know that our dear friend will not be joining us at the dais.

Dianne conducted herself with steely determination, grace, and dignity in all of her work before this body. And I hope we will all try to honor her by measuring up to that high standard. I want Members to know we're working on a plan to honor her personally for her service on the Committee, and we'll talk about that a little later.

Today, we'll hear from five judicial nominees: Judge Mustafa Kasubhai—did I come close to pronouncing that correctly?

Judge KASUBHAI. Yes.

Chair DURBIN. Good. Nominated to the District of Oregon; Judge John Kazen, nominated to the Southern District of Texas; Judge Shanlyn Park, nominated to the District of Hawaii; Jamel Semper, nominated to the District of New Jersey; and Micah Smith, also nominated to the District of Hawaii. Congratulations to each nominee, and your family and friends who gathered.

Before I turn to Ranking Member Graham, I want to note that each of today's nominees has received blue slips from both home State Senators. This includes Judge Kazen, who has received blue slips from Senators Cornyn and Cruz.

Both Senators previously worked with the White House on the nomination of Judge Irma Ramirez to the Fifth Circuit. And I

thank them and the White House for continuing to work in good faith to fill judicial vacancies on Texas district courts. I look forward to similar progress in other States.

We have several colleagues joining us to introduce nominees today, and first, I'll turn to Senator Graham for any 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 think all of us on this side have the same view of Senator Feinstein as you do. She was a consequential Senator, an incredibly kind, decent person who was passionate about her causes. But you could always find common ground if you sought it with Dianne, and she will certainly be missed.

If you're looking for a role model, as a young person, on how to conduct yourself, I would recommend Senator Feinstein. The life she lived would be a good one to try to replicate.

So a couple things. Last month was the largest illegal crossings, I think, ever—border is in absolute chaos. Ukraine, since the war started that was supposed to last 2 weeks, has destroyed 50 percent of the Russian combat capability. We spent less than 5 percent of our military budget in helping Ukraine, and NATO was larger.

So if you'd told me in the 1980s not one American soldier would have to die to reduce the combat capability of the Russian military, and you could do that for 5 percent of our military budget, nobody would've believed you. Ukraine has taken back 50 percent of the territory lost in the initial invasion, and back from 2014 even. What more do you expect these people to do? They're fighting like tigers. They have died by the thousands. It is in our interest.

To those on the Democratic side, we have to come up with a border security plan that will stop the flow: 8,000 to 10,000 people a day with no end in sight is unsustainable. The asylum system is broken. The First Safe Country Rule has been ignored. Parole has been abused. I will challenge my Democratic colleagues to work with us to find a strong border plan to stop what is going on at the border.

To my Republican colleagues, I don't know how the drama in the House ends. But I want us to be the party that recognizes: You do not solve your national debt problems by reducing the power of your military in dangerous times. It's never cheaper to let people take land of others by force of arms because they won't stop.

So if you're worried about adding to the debt, let's make sure we don't have a major war between NATO and Russia, and that China is not enticed to invade Taiwan.

Being strong is cheaper than being weak. And if you really want to do something about the debt, which we all do, most of the money is not in the discretionary accounts. So with that Mr. Chairman, ready for the hearing.

Chair DURBIN. Thank you, Senator Graham. Let me just say that I couldn't agree with you more on your statements on Ukraine. I was saddened, angered, maybe even embarrassed, that we did not include money for Ukraine in the recent Continuing Resolution.

The war goes on. The Ukrainians are sacrificing their lives. As the president of Ukraine, Zelensky, told us when he met with us just a few weeks ago, we give our lives, we ask you to give your money. That's not too high a price to pay to defend freedom and democracy in this important part of the world. I stand ready and hope that we do this quickly.

On the issue of the border, I have said it publicly before and we are struggling to find a starting date, but I hope it's soon, when we do sit down on a bipartisan basis and start talking about the border.

Congress has to accept its legislative responsibility. We cannot just point fingers at the White House. We are the ones who are commissioned to write the laws and to make the policy that the White House should follow. And we have a lot more to do.

We haven't had a significant immigration bill for over 30 years. We need one and need it now. And I'm ready to join you on a bipartisan basis to make that happen.

We have introductions for our nominees and many of our colleagues are here for the purpose. And first up is Senator Ron Wyden of Oregon to introduce Judge Kasu——

Senator WYDEN. Kasubhai.

Chair DURBIN. Thank you, I appreciate that.

STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM THE STATE OF OREGON

Senator WYDEN. Thank you, Mr. Chairman. And Mr. Chairman, thank you very much for your courtesy, and all your help with our nominee.

And to colleagues, just one sentence about Senator Feinstein. Last night I was looking at pictures. And at an event that she organized, there was our former Republican Leader here, Senator Cornyn, Trent Lott, standing with Henry Waxman, the California liberal. And I said to myself, that was part of the beauty of Dianne Feinstein, always bringing people together. Remarkable.

So, Senator Merkley and I are very pleased to be able to join all of you to introduce Judge Mustafa Kasubhai, nominee for the District Court for the District of Oregon. His credentials are so long, I would keep you till breakfast if I went through. And I would ask Mr. Chairman, if we could make my remarks part of the record, and I'll just make a couple of comments.

Chair DURBIN. Without objection.

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

Senator WYDEN. The judge is eminently qualified for this position. You've got those qualifications. He was a district court magistrate. So in effect, he was the first Muslim-American judge to be appointed to the Federal bench. And he's been in private practice.

And I think for my first point, because a number of you have raised it, Senator Merkley and I hold Town Hall Meetings in all of our rural counties. I have some this weekend. The judge has extraordinary rural credentials because before he served as a magistrate judge, he practiced law in Klamath Falls.

Now, if you're not familiar with Klamath Falls—I've got a Town Meeting there in a few days—it's very rural, agriculture, natural

resources. And it's a place that's recruiting doctors, and lawyers, and the like.

But to give you an idea of these kind of rural connections, the judge owns a portable sawmill that he uses to mill logs into beautiful finished wood products. So if you ever are looking for a way, Senator Whitehouse, to have some wonderful floors in your home——

[Laughter.]

Senator WYDEN [continuing]. Don't call Ghostbusters, call our nominee because he can do it for you.

So he is the first South Asian-American to serve on our local courts at home when he was appointed as magistrate judge. As I said, he was first Muslim American in his 16 years on the bench. He won awards for judicial excellence from the Oregon Bar, the National Asian Pacific American Bar Association, and they're a testament to his work ethic and his expertise. The unanimous judgment of the American Bar Association was to rate him as "well qualified."

And one of the other areas that Senator Merkley and I appreciate about the judge is, he's always mentoring students in order to create hope and opportunity for the next generation of legal professionals.

Mr. Chairman, I've entered, with your staff, the letters of support from across the political spectrum, across Oregon, across this country, people who have worked with him.

I urge all Members of this Committee to support Judge Mustafa Kasubhai, and will be happy, as Oregon's United States Senators, to work with all of you for those who want additional information. But I know some of you asked questions about the judge's connection to rural communities, and his are stellar.

Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Wyden. Senator Merkley.

STATEMENT OF HON. JEFF MERKLEY, A U.S. SENATOR FROM THE STATE OF OREGON

Senator MERKLEY. Well, I am honored and pleased to add my voice to that of my colleague, Senator Wyden, in support of this nomination.

Mustafa Kasubhai's leadership in the law has been evident since he first came to our State over 30 years ago as a young man to attend the University of Oregon School of Law. And he served as president of the Student Bar Association.

Soon after, he began his career in private practice, representing clients throughout Southern and Eastern Oregon while working out of offices in Eugene and Klamath Falls. It gave him a personal understanding of the challenges facing working folks, folks living in rural areas, which can look very different in our State, as in so many States, from the viewpoints in larger cities.

His service continued as a member of the Oregon Workers' Compensation Board. He was appointed to the Lane County Circuit Court in 2007, where he served for a decade. And that was when the Board of Judges, which is composed of the active and senior Federal court judges for the District of Oregon, elected Judge Kasubhai to serve alongside them as a U.S. magistrate judge. He

served in that position ever since, and in September, President Biden nominated him to join their ranks on the U.S. District Court for Oregon.

I appreciate his quote when he said, "I have always imagined that democracy is solar powered. It works when a light shines on all of its functions. That light is the rule of law."

And earlier this week, he visited the National Archives, too, and his words pay tribute to the Constitution. So it's with admiration and with pride that I commend his nomination to all of you sitting here on the Judiciary Committee.

Thank you for taking into account his sterling credentials, his breadth of service at all levels, and the respect and admiration of his peers and his students all across our State. He's an outspoken champion for justice, a fierce believer in democracy, and a passionate advocate for the rule of law.

Thank you, Mr. Chairman, Mr. Ranking Member, and Members of the Committee.

Chair DURBIN. Up next is Senator Cornyn to introduce Judge Kazen.

OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Chairman Durbin, for allowing me to introduce John Kazen, who's been nominated for a vacancy in the Laredo Division of the Southern District of Texas.

Since 2018, he's served as U.S. magistrate judge on the district court. He's handled over 85 civil consent cases that have gone to final judgment. As Members of the Committee know, magistrates ordinarily do not handle the full docket that a Federal judge does. But in cases where the parties consent, then they can. So he's handled 85 civil consent cases that have gone to final judgment as well as almost 2,000 misdemeanor cases.

And it's unusual, at least in my observation, that magistrates or their—that parties consent to magistrates to try jury trials. But he's had seven civil trials and one misdemeanor criminal trial, which is a remarkably high number for a magistrate judge, particularly since he's only served since 2018.

Judge Kazen has gotten high praise from the Laredo legal community and from the other district judges in Laredo. Judges Marmolejo and Saldaña rave about his work. A good benchmark of this is that Judge Kazen has an overwhelmingly high number of consent cases, as I mentioned. That represents, I believe, a great vote of confidence in his integrity, his temperament, and his legal abilities.

Prior to his current role, Judge Kazen spent the majority of his career in private practice working at a firm he founded in 1997.

It's significant that Judge Kazen has been nominated to this position because his father, George Kazen, a revered icon, really, in the legal community in Laredo in South Texas, served on the Federal bench for 39 years. So I know, Judge, your father passed away in 2021, and I'm sad, as I know you are, he couldn't be here today to share in this remarkable accomplishment of yours. But it's clear that his legacy lives on.

Senator Cruz and I—Mr. Chairman, and I appreciate the kind comments you made about our good faith cooperation with the nomination process—Senator Cruz and I, as you know, have a Federal Judicial Evaluation Committee. It's a bipartisan committee of some of the best lawyers in the State of Texas. We call it the FJEC, for short, the Federal Judicial Evaluation Committee.

It's an institution that I'm very proud of because we make sure, regardless of who's in the White House, that we have properly vetted candidates we can recommend to the White House. And we appreciate the fact that the White House has been receptive to our willingness to work in good faith. Senator Cruz, I know, feels the same way.

And Judge Kazen received the highest marks of any of the people interviewed for this position. So I have a great deal of confidence that he, Judge Kazen, will faithfully uphold the rule of law and the Constitution of the United States. And I look forward to supporting his nomination, and I would urge all of my colleagues to do the same. Thank you very much.

Chair DURBIN. Thank you, Senator Cornyn. We have two nominees from the State of Hawaii, and I will recognize the senior Senator Brian Schatz, first, to introduce Judge Park and Mr. Smith.

STATEMENT OF HON. BRIAN SCHATZ,
A U.S. SENATOR FROM THE STATE OF HAWAII

Senator SCHATZ. Thank you very much, Chairman Durbin, Ranking Member Graham, Members of the Committee.

I'm proud to support the nominations of Micah Smith and Judge Shanlyn Park to serve as judges on the U.S. District Court in Hawaii. Both of them are exceptionally qualified and I appreciate the opportunity to help to introduce them to the Committee.

Micah Smith's story is a quintessentially American one. The son of an immigrant, he grew up in a housing project on Kauai, attending public schools before going to Lock Haven University, where he graduated with top honors, and later to Harvard Law School.

For the past 11 years, he has served as a Federal prosecutor for the U.S. Attorney's Office, first in the renowned Southern District of New York, and, more recently, in the District of Hawaii, where he serves as deputy chief of the Criminal Division.

Those who know him often highlight his abiding sense of fairness and balanced temperament. A colleague noted, quote, "He listens and considers carefully before voicing his opinion," adding that he has an unwavering commitment to achieve a better system of justice that provides access to justice for all.

That same commitment to equal justice underpin Judge Shanlyn Park's two decades as a public defender, giving voice to those most in need. A graduate of the University of Hawaii's Richardson School of Law, she represented low income defendants on a variety of complex cases, earning a reputation, among colleagues and opposing counsel alike, as a highly skilled, compassionate, and solutions-oriented attorney.

And she brought her integrity and sound judgment to the bench, since becoming a State court judge in 2021. In supporting her nomination, a former boss remarked, quote, "The law is more than a job for Shanlyn," calling her, "a great ambassador for the law."

Judge Park's credentials are impressive by any measure, but the historic nature of her nomination should not be lost on anyone. If confirmed, she would be the first Native Hawaiian woman to serve on the Federal bench.

Both nominees have the legal acumen, as well as the character and temperament, required to fulfill the duties of the United States district court judge. It's for these reasons that I'm proud to work with a Member of the Judiciary Committee and my partner in the Senate, Senator Hirono, in supporting their nominations to the Federal bench. Thank you very much.

Chair DURBIN. Thanks, Senator Schatz. Senator Hirono.

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

Senator HIRONO. Thank you, Mr. Chairman. I'm glad to join my colleague Brian Schatz in supporting the two nominees from Hawaii. So thank you, Mr. Chairman and Ranking Member Graham, for holding this hearing for our two outstanding nominees, Micah Smith and Judge Shanlyn Park.

And I want to begin by welcoming their families, and their friends, and loved ones, including all those who got up really early this morning to watch these proceedings in Hawaii.

So, in introducing Judge Shanlyn Park, she has been nominated to serve on the U.S. District Court of Hawaii. Judge Park was born and raised in Hawaii, where her distinguished career has been spent almost entirely in public service. Inspired, no doubt, by her father's work as a longtime Honolulu police officer.

She graduated cum laude from Chaminade University and the William S. Richardson School of Law, and she clerked for Magistrate Judge Francis Yamashita.

Prior to her time on the bench, Judge Park served in the Federal Public Defender's Office for the District of Hawaii for 20 years. During her career, she represented numerous indigent clients before the U.S. District Court for the District of Hawaii and the Ninth Circuit.

After leaving the Federal Defender's Office, she entered private practice and, even there, she demonstrated her commitment to serving her community, receiving special recognition from the District of Hawaii for providing pro bono services.

In 2021, she was appointed to serve as a Hawaii Circuit Court judge, and as a judge, she has earned high marks from practitioners and litigants for her even-handed approach and well-reasoned decisions.

Judge Park is held in high regard in the Hawaii legal community as demonstrated by letters of support that the Committee has received from the former U.S. Attorney Flo Nakakuni, Federal Defender Salina Kanai, and a group of prosecutors at the Honolulu Department of the Prosecuting Attorney.

National groups have also offered support for her, including the National Asian Pacific American Bar Association, the Native Hawaiian Bar Association, the National Congress of American Indians, the Native American Rights Fund, and the National Native American Bar Association.

If confirmed, Judge Park would make history, as noted by my colleague, Senator Schatz, as the first—the first Native Hawaiian woman to serve as a Federal district court judge. And we say it's high time and long overdue.

Along with Judge Park, I'm pleased to introduce Micah Smith, nominated to serve in the U.S. District Court for the District of Hawaii. Micah has an impressive legal career. After graduating from Lock Haven University, summa cum laude, and Harvard Law School, magna cum laude, he clerked on the U.S. Court of Appeals for the Second Circuit for Judge Guido Calabresi, and then on the Supreme Court for Justice David Souter.

Micah spent 4 years at O'Melveny & Meyers, where he helped author a brief in *U.S. v. Jones*, a pivotal Fourth Amendment case before the Supreme Court. And Justice Scalia wrote the opinion for a unanimous Supreme Court, siding with Micah's client, Jones.

He then became a Federal prosecutor, a job he has held for the last 12 years. He began at the U.S. Attorney's Office for the Southern District of New York, where he tried cases on racketeering, drug trafficking, fraud, money laundering, and murder for hire. He was promoted to deputy chief and then co-chief of the Violent and Organized Crime Unit, where he supervised approximately 20 prosecutors.

Even with all his success, Micah never forgot where he came from. A proud son of Kauai and graduate of Kauai High School, Micah returned home to Hawaii in 2018 to join the U.S. Attorney's Office in Hawaii.

And he was promoted to deputy chief of the office's Criminal Division, and serves as the criminal civil rights coordinator, working closely with the Civil Rights Division, law enforcement agencies, and other prosecutors to protect the rights of people in Hawaii.

And last year, he was also named chief of appeals and legal strategy, responsible for reviewing and editing appellate briefs, providing advice to other prosecutors in his office.

The quality of Micah's work is evident. He has won numerous awards in his time at the Department of Justice, including the Homeland Security Investigations, New York Prosecutor of the Year Award, and U.S. Attorney General's Award for Distinguished Service, and many others. The Committee has received many letters supporting his nomination, including from national organizations.

So I know that both of these nominees have the kind of experience, temperament, and demonstrate a commitment to public service, along with their deep roots in Hawaii, which will make them excellent judges in the Hawaii District Court.

And after today's hearing, I know that my colleagues will agree, likewise, and I urge their swift consideration and confirmation. Thank you, Mr. Chairman.

Chair DURBIN. Thank you very much, Senator Hirono. And now I recognize Senator Menendez.

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

Senator MENENDEZ. Thank you, Mr. Chairman. Chairman Durbin, Ranking Member Graham, and distinguished Members of the

Committee, it's an honor to join in introducing an exceptionally well-qualified nominee for the U.S. District Court of New Jersey, Mr. Jamel Ken Semper.

For more than 15 years, Mr. Semper has tirelessly sought justice for the residents who call New Jersey home. It is a central theme that runs throughout Mr. Semper's career: an unwavering commitment to the rule of law and to the communities the law is meant to protect.

He began his career as an assistant prosecutor in Union County, handling a wide range of cases across the appellate, juvenile, and adult trial units. Then in Essex County, he went after carjackers and murderers, including the first prosecution of a homicide under New Jersey's domestic terrorism statute.

In 2018, he was sworn in as an assistant United States attorney in Newark, climbing the ladder, and ultimately serving as chief of both the Violent Crime and Organized Crime Units.

Today, he's the deputy chief of the Criminal Division, a role where he is responsible for supervising all phases of criminal investigation and efforts.

In each of these positions, Mr. Semper has demonstrated an unflinching fidelity to the rule of law and the role of precedent in pursuing cases. Time and time again, he has forged the essential balance between keeping New Jerseyans safe and building trust between the residents and those who have sworn an oath to protect them. This community-focused approach has earned Mr. Semper plaudits from individuals and organizations representing diverse interests, especially those who advocate for communities of color in the Garden State.

Consider the words of Reverend Ron Slaughter, the pastor of Saint James A.M.E. Church in Newark on the day of Mr. Semper's nomination. He said, quote, "Semper has touched all the bases, stayed connected to the community, remained patient. This is a great day for New Jersey, America, our judiciary, and my community." And I couldn't agree more.

Mr. Semper's nomination not only furthers our collective goal of addressing judicial vacancies across our State and country, it also advances our efforts to diversify the Federal bench. It brings us one step closer toward ensuring that our most hallowed institutions reflect the rich tapestry of America.

As I said at the start, I am truly honored to introduce him today. Why? Because for nearly 18 years, I've always taken my constitutional duty to provide advice and consent on judicial nominees seriously. It's one of the most solemn obligations as a United States Senator.

I'm a firm believer that our independent judiciary must reflect the best of America's values and its citizens. Which is why I can honestly say that Jamel Semper's relentless commitment to public service, combined with his temperament, intellect, and the trust he has built with New Jerseyans, is exactly what we look for in a Federal judge. He will no doubt be an asset to New Jersey's Federal bench.

I encourage my colleagues to give him all due consideration at today's hearing and urge strong bipartisan support of the Com-

mittee so that he can swiftly be confirmed to his rightful place in the District Court of New Jersey.

Chair DURBIN. Thank you, Senator. Finally, Senator Booker is here to introduce Mr. Semper as well.

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

Senator BOOKER. Thank you. It's an honor to join my senior Senator in singing the praises of Jamel Semper Fi—I mean, I'm sorry——

[Laughter.]

Senator BOOKER [continuing]. Just Semper. Although he is always loyal. This guy is incredible. And I don't want to repeat the things that Senator Menendez has already said, but I do think he left out that this man is incredibly Jersey.

How Jersey is he, do you ask? He is a graduate of Rutgers Law School. He is a native son of Essex County. He is more Jersey than the Garden State Parkway. And he, like many people who have driven that notable road, has paid it forward. He's paid his tolls.

And I will tell you, perhaps one of the greatest contributions he has made to our State before I talk about his professional life, is his extraordinary family. Now, I just would love my colleagues to see this family and I would ask them to stand up right now. It's not a commandment from the Senate, but it is a request——

[Laughter.]

Senator BOOKER [continuing]. These are four incredible kids who I think are future leaders. I'm happy that the Constitution says they have to wait until they're 30 to run against me——

[Laughter.]

Senator BOOKER [continuing]. But it is just an extraordinary family that he has. Perhaps his best life contribution.

But I live in Newark, where this man has worked for a very long time. He worked—and my Republican colleagues want to note—under a Trump-appointed U.S. attorney. And that work that they did, they sat together with my police director then, in Newark, a man named Anthony Ambrose, and they came up with a strategy to keep our city safe.

At a time that shootings were going up in a lot of places, the nominee will know that shootings dropped dramatically in the city of Newark because of their prosecutorial strategies. When I asked the mayor, when I asked the police director, what was one of the key secrets, they pointed to the work that this team did. And Mr. Semper was a major part of that.

What does it mean when you have a city that drops in homicides or shootings almost a quarter? Well, it means that the city thrives. This is an extraordinary American in so many ways.

In the prosecutor's office, he supervised 36 Federal prosecutors in all phases of criminal investigation and litigation, helping to drive down crime in our State.

In his current role as deputy chief, he also supervises the Violent Crime Initiative, a joint task force that's set out to reduce gun violence in New Jersey communities. And they had incredible success.

I don't want to repeat all of his incredible credentials, but I do want to say something very personal. As many people on this Com-

mittee know that I am very concerned about how many people have been chewed up by the criminal justice system.

We have a nation that has a proclamation that we are the free Nation, but we incarcerate more people than any other nation on the planet Earth. There are more African Americans incarcerated today, and under criminal supervision, than all the slaves in 1860.

And so I asked him in my interview: You're a prosecutor, you helped keep my city safe, but how am I sure that young men and women coming before you will get a fair shake at the criminal justice system?

And in a very emotional response, he told me what many Black men in America have—that the criminal justice system has visited upon his family. He's had a close family member who was a defendant.

He brings somebody to the bench that we really need: extraordinary empathy. He's helped keep Black communities, like the one I live in, safer and stronger. He's done it with empathy and heart. He has brought justice to this justice system.

And should we give this great Jersey boy a chance to sit on the bench? As he showed with a U.S. attorney nominated by Trump, as he showed with a city that is a bright blue city in our Nation, that he will find balance, he will find judicial restraint, he will find aggressive pursuit of justice. He will be the kind of judge that we need in the United States of America.

And I know that this is a day that our ancestors are happy. That our bench in New Jersey should further reflect the experiences of so many people. This is a Jersey boy that I'll assure that will even make my friend from Louisiana, Senator Kennedy, proud. Thank you.

Chair DURBIN. Thank you, Senator Booker. I thank all the Members for coming and introducing the nominees who will now approach the witness table.

[Pause.]

Chair DURBIN. Please remain standing. Thank you. Please raise your right hand.

[Witnesses are sworn in.]

Chair DURBIN. Thank you. Let the record reflect that all of the nominees answered in the affirmative. So we will let them proceed.

And I'm going to start with Judge Kasubhai with a 5-minute opening statement. The same opportunity will be given to each nominee. Judge, proceed, please.

STATEMENT OF HON. MUSTAFA TAHER KASUBHAI, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF OREGON

Judge KASUBHAI. Thank you, Chair Durbin and Ranking Member Graham, for the privilege of appearing before this Committee for your consideration.

I'd like to express my deep gratitude to President Biden for nominating me, and for giving me a chance to serve my country.

And to my home State Senators, thank you, Senator Wyden and Senator Merkley, for those gracious introductions and for your strong support. Coming here 3,000 miles away, you brought a heart of Oregon that made me feel right at home.

Now, I'd like to acknowledge some important people who brought me into this life, and some people who give my life and work deep meaning. I'm the proud son of immigrants, Taher and Aviza Kasubhai. They immigrated here as Indian Muslims and, soon after, embraced their new identity as American Muslims.

And in raising me in our faith traditions, I learned the importance of justice and mercy, kindness and compassion, and pursuing one of the highest callings: public service. And that to be in service to others requires practicing humility every day.

And to my wife and best friend, Kristin, it is from our seemingly very different backgrounds that we've created a life together that's best summed up as "A Life of And," the most powerful word in the universe. And when bringing all of each of us into the mix, our sum is infinitely greater than the parts. And I love you to infinity and back.

And to our two children, I'm in awe of your beautiful and independent spirits. You both are an antidote to cynicism. You make me an optimist, and I love you both two times to infinity and back, which makes three times to infinity and back a real number.

To Bonnie and Ernie, my mother- and father-in-law, you are the salt of the earth. And thank you for welcoming me into your home. You bring an abundance of humility and enduring commitment to family. And you've taught me that whatever we build, we build it for centuries to come. In other words, you can't go wrong with adding more concrete.

And to my friends and colleagues in the District of Oregon, I couldn't hope to work with more kind and gracious public servants. You embody that ideal of service to others. You make me a better judge.

And finally, I'd like to thank my alma mater, the University of Oregon School of Law. The only public law school in Oregon, and whose mission is to inspire public service. Thank you, to all the deans and faculty through the decades who have inspired so many graduates, including me, to make public service our vocation.

Honorable Senators of the Committee, I look forward to our discussion.

Chair DURBIN. Thank you, Judge. Judge Kazen.

STATEMENT OF HON. JOHN A. KAZEN, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Judge KAZEN. Chair Durbin, Ranking Member Graham, thank you for scheduling today's hearing. It is a privilege to appear before this Committee.

Thank you, Senator Cornyn, for your very kind introduction. I want to sincerely thank Senator Cornyn and Senator Cruz, as my home State Senators, for your support and recommendation for me for this position. And of course, I want to thank President Biden for nominating me to the position of district court judge.

I would not be here if it were not for the examples that my parents, Barbara and George Kazen, set for me throughout my life. My mother, Barbara, dedicated her life to serving the community and to helping the less fortunate of our community. My father was, to me, the embodiment of dedication and public service to the law. Al-

though they have both now passed, they have given me their spiritual strength throughout this process.

I'd like to introduce my wife, Hayley, who is here with me today, who has always been a source of inspiration and strength to me throughout our 30 years of marriage. We are very proud of our daughter, Claire, who is finishing her last year of veterinary school, and who could not miss the days to travel here because she's in the midst of her rotations. And so we're sad to miss her, but we are very proud of her.

Here, instead, is one of our nieces, Ms. Mia Escobedo, who is a political science major at Texas State University. She was able to take a few days off from college and join us. She was interested in this very constitutional process.

There are so many family and friends, and court staff, and current and former law clerks, who are watching and who have been incredibly supportive to me throughout this process. And I want to thank all of them from the bottom of my heart.

I would also not be here without the mentors that I've had throughout my legal career. There is, of course, my father, but also Judge Robert Parker, who I clerked for after graduating from law school. The lawyers—many lawyers that taught and trained me at Kemp Smith law firm in El Paso, Texas, my former law partners in Laredo, and so many other lawyers and judges that I've learned from over the course of my career.

But I particularly want to recognize the two district judges at our Federal courthouse in Laredo: Judge Diana Saldaña and Judge Marina Garcia Marmolejo, who have been mentors and role models to me during the past 5 years that I have worked with them as a magistrate judge. They have been tremendously supportive to me throughout this process, and I appreciate their guidance and mentorship.

Senators, I look forward to answering your questions.

Senator BOOKER. Mr. Chairman, I didn't know—he pointed out his wife, and his wife did not identify herself. I don't know if she's—there she is. Okay. So good to see your family here.

Chair DURBIN. Thank you, Senator Booker. Judge Park.

STATEMENT OF HON. SHANLYN A.S. PARK, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF HAWAII

Judge PARK. Aloha. Good morning, Chair Durbin, Ranking Member Graham, and Members of the Committee. I am grateful and humbled to appear before you this morning as you consider my nomination.

I'd like to thank President Biden for the honor of this nomination. And I'd like to thank Senator Hirono and Senator Schatz for their very kind words this morning, and for their recommendation to the President.

I would like to take a moment to introduce a few important people in my life. First, my husband, Ku'uhaku Park, who has been with me for the last 28 years. His love and support, I couldn't do it without him.

Next, my parents, Louis and Barbara Souza. My parents' support, love, and foundation have always been with me. They could

not travel here with me today, and I hope they figured out how to use the link that I sent them——

[Laughter.]

Judge PARK [continuing]. So that they can be watching at 4:30 in the morning in Hawaii.

I'd like to acknowledge and thank my two wonderful children, Kamalu and Kahiao. Being their mother has been an honor, and I am so proud of the people that they have become.

I come from a large family and have many supportive friends. I won't go through that list today, but I do want to thank and acknowledge them, as well.

I especially want to thank Judge Leslie Kobayashi. If I am fortunate to be confirmed, I would be humbled and honored to fill her vacancy. Judge Kobayashi has been my mentor, my friend, my inspiration. She's the type of judge who leads by example, and administers justice fairly and impartially, and embodies the word, "Aloha."

I also want to acknowledge friends and colleagues spanning my 25-plus-year career. These lawyers and the legal staff that I worked with embody hard work, integrity, kindness, and I have learned so much from them each and every day.

Finally, I want to acknowledge and thank my State court family. I am so incredibly grateful to my colleagues on the State of Hawaii judiciary, especially Judges Trish Morikawa, Lisa Cataldo, Rowena Somerville, and Jeanette Castagnetti. My colleagues are good individuals who do good work to make Hawaii better, and I am proud to serve the people of Hawaii beside you.

And finally, I'd like to thank my hardworking staff, Crista Odom and Trevor Tomashero, as well as my past and present law clerks. These individuals allow me to do my job daily, and they have made my chambers a vibrant second home.

Thank you, again, for the opportunity to appear before you today, and I look forward to your questions.

Chair DURBIN. Thank you, Judge. Mr. Semper.

STATEMENT OF JAMEL K. SEMPER, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Mr. SEMPER. Thank you, Chairman Durbin and Ranking Member Graham, for scheduling this hearing. I'd like to thank President Biden for the honor of this nomination. I'd like to thank Senator Menendez and Senator Booker for your recommending me to the President, and along with your kind words this morning.

For 15 years, I've dedicated my career to public service by upholding the rule of law. I've been blessed to serve with selfless public servants.

I'd like to thank my former colleagues at the Union County and Essex County Prosecutor's Office.

I would like to thank all my State and Federal law enforcement partners and all of my colleagues at the United States Attorney's Office in the District of New Jersey.

I'd like to thank my friend and mentor, New Jersey's former U.S. Attorney Craig Carpenito, who first gave me the honor of serving my country 5 years ago.

With me today is my mother, Judy Wilson, an immigrant from Guyana who came to America after her mother, who served as a house aide to a family in New York, immigrated my mother to Brooklyn, where our American story began.

Also with me today is my big brother, Khalid Alexander Semper. A September 11th cancer survivor who helped put me through law school.

Also with me today is my life partner, my wife, Lucinda Jordan McLaughlin. We met 15 years ago while serving as prosecutors. We never imagined that our journey would bring us before this Committee. We are blessed to be here today with our four children who are the absolute center of our lives, and who I hope will be quiet during the course of this hearing.

[Laughter.]

Mr. SEMPER. I would like to thank my father, Edrich Ken Semper, who we lost 5 years ago after a long and brave battle with cancer. While serving as a police officer in his native Trinidad, my father came to America with the hope of becoming a forensic scientist so he could return home to serve. The vast opportunities he received in America, led him to become an engineer and a small business owner in New Jersey for 30 years. My father infused us with a love for America and a passion to serve others.

I'm very grateful to him, and I look forward to answering your questions.

Chair DURBIN. Thank you, Mr. Semper. And Mr. Smith.

STATEMENT OF MICAH W.J. SMITH, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF HAWAII

Mr. SMITH. Chair Durbin, Ranking Member Graham, and Members of the Committee, thank you for considering my nomination today.

Thank you to Senator Schatz and Senator Hirono for their generous introductions this morning and for their strong support. Thank you to their judicial selection committee for recommending me to the Senators.

And thank you to President Biden for the tremendous honor of this nomination. It's especially an honor to be considered for the seat held by Judge Seabright, a fair and thoughtful judge, and a dedicated public servant.

I wouldn't be here today without the love and support of my family and friends. And so I'm grateful for the opportunity to introduce some of them to you today.

My parents, Betty and Bill, flew in from Texas to be here. My mother grew up in what was, at that time, the Territory of Hawaii, in plantation housing. My father grew up in Central America in Honduras, and he immigrated to the United States as a young adult. And through their sacrifices and hard work, they made it possible for their four children to have a better life. And one of their children is sitting before this honorable Committee today. I thank my parents, and I thank our great country, for making stories like ours possible.

My wife, Tiana, is also here. Tiana and I grew up together on the island of Kauai. It's a small, tight-knit rural community. And

for the last 20 years, I've been blessed with her optimism, humor, and love. Tiana is accompanied today by our 10-year-old son and our 7-year-old daughter. And like Mr. Semper, I'm very hopeful they'll sit still during the hearing, and we're so proud to be their parents.

My siblings are all here, as well: my big sister, Anna; my big brother, Luke; and my younger brother, Jonathan. They're quite simply the best siblings anyone could possibly have.

And last, I'd like to thank my professional family. I won't mention everyone by name. But I would like to mention Justice David Souter and Judge Guido Calabresi, whom I had the honor of clerking for early in my career, Chief Judge Sri Srinivasan, whom I had the privilege of working with at the law firm of O'Melveny & Myers.

I'd also like to thank my fellow law clerks from those years, and my colleagues from those years, as well as my many friends from the U.S. Attorney's Offices in the District of Hawaii and the Southern District of New York. Two of those friends, Ryan Poscablo and Robert Boone, were able to join me at this hearing, as well.

So, thank you, again, Senators, and I look forward to your questions.

Chair DURBIN. Thank you. Each Member of the panel will have 5 minutes of questioning.

Judge Kazen, you presided over several naturalization ceremonies, including two this year. In one of your addresses to our new citizens, you said, and I quote, "Your journey is not over. America is a country of immigrants. America has been made great by immigrants. We are all children of immigrants."

That was a very poignant and profound statement, particularly in light of the gathering today. We have so many people aspiring to serve this Nation whose stories are stories of immigrants coming to this country at great sacrifice to be part of America.

Are there any other observations you'd like to make about your naturalization experience?

Judge KAZEN. Senator, I tell—I talk to the participants in the ceremony that I am the product of immigrants. I'm a fourth-generation Lebanese immigrant. My great-grandparents immigrated from Lebanon.

And so I share with them the example that my grandfather and my father, and what they accomplished and what their children, is what I mean of their story has not ended. Their children and their descendants will contribute, and have the potential to contribute to this country, and enrich this country.

And so, the only other thing I can think of is presiding over those naturalization ceremonies is one of the most rewarding things I do as a judge because those people, after they take the oath of citizenship, they are glowing with pride to become citizens of this country.

And it's something that you can tell it's been a life accomplishment for them. It's extremely rewarding to share that experience with them.

Chair DURBIN. Thank you for sharing that with us. Judge Park, I'm going to ask you a hard question. You served as public defender for 20 years, I believe?

Judge PARK. That's correct.

Chair DURBIN. And I've taken a look at some of the cases that you were called on to defend criminal defendants before the court. Some of the crimes that were charged were absolutely horrible against those defendants.

What did you view as your responsibility as public defender and as an attorney when it came to the defense of these individuals?

Judge PARK. Senator, I felt that it was my responsibility pursuant to the Sixth Amendment of the Constitution to provide these individuals with zealous representation. That is what the Constitution demands, and that is what I provided to these individuals.

So many individuals who come into the criminal justice system don't have an understanding of the crime that they've committed, the impact.

And so throughout my career, I worked on many cases, as you've acknowledged. And throughout that process, I've advocated for those individuals, but also understood the impact that their offense had on others and tried to acknowledge that when we were dealing with the case.

Chair DURBIN. Judge Kasubhai, I hope I get your name correct before the end of the hearing. Am I close?

Judge KASUBHAI. Senator, it's Kasubhai. And yes, you are right on.

Chair DURBIN. I looked at your record. Looks like 4 years or so, maybe 5, as magistrate. Another 11 or 12 as a State court judge, and you come here today. Can you tell me about the nature of a courtroom?

Many people's experience is limited to what they've seen on television. And having practiced before being elected to Congress in the Central District of Illinois and getting to know the Federal judges, I know the temperament of a judge and the environment of the courtroom itself has such an impact on whether people feel that they're being treated justly and fairly.

What is your experience?

Judge KASUBHAI. Senator, over the 16 years that I've had the privilege of serving as a judge in both the State of Oregon and in our District Court of Oregon, temperament and demeanor, particularly from the judge.

But that also extends to the way in which our staffs engage with the people that come into our courtroom, absolutely impact how access to the courts might really turn into actually accessing the courts. So it turns the potential into the reality.

The foundation of that is humility. And frankly, humility is the foundation of all things that come from the court and upholding the rule of law. And so what I try to do when I sit on the bench is to ensure that people—I extend to people graciousness and patience. So they have not just the opportunity to be heard, but to be deeply heard for the cases to be considered.

And when I issue a ruling, whether somebody prevails or doesn't prevail, I want that ruling to be conveyed in a way that helps them to think of the court as a place in which decisions can be decided impartially without regard to who they are and that they were heard.

Chair DURBIN. First man I ever worked for in politics said humility is a first casualty in politics. And maybe that's the case. I hope

that our deportment on this side of the panel will be excellent today, as well. Senator Graham.

Senator GRAHAM. Thank you, Mr. Chair. Mr. Kasubhai, in 2020 while you're a magistrate judge, you apparently gave a speech stating that Ibram Kendi is an amazing historian, author, and he does important work in the history of the construction of race. You wrote a book, am I right, called, "How to Be an Antiracist"?

Judge KASUBHAI. Senator, I want to make sure I understood the question. I didn't write a book——

Senator GRAHAM. Or it was an article? What was it?

Judge KASUBHAI. I believe the author, Ibram Kendi, wrote a book about how to be an anti-racist.

Senator GRAHAM. Okay. I'm sorry. Yes. So you cite him in this speech. And here's what he argues: "That the only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination." Do you agree with that?

Judge KASUBHAI. Senator, discrimination in the treatment of—of treating anyone negatively is not appropriate. And our courts, through the *Students for Fair Admissions*, has also clarified that as a national guidepost.

Senator GRAHAM. So you don't agree with that?

Judge KASUBHAI. The statement that you meet discrimination with discrimination is not part of what our courts should be upholding. It has been clear in our guidance from the Supreme Court, as well.

Senator GRAHAM. So you do not agree with Mr. Kendi's proposition as I read it to you?

Judge KASUBHAI. That is correct.

Senator GRAHAM. Okay. Tell me about the—is it a pamphlet of your court? I think you created, "Pronouns in the Courts" guide. Tell me about that.

Judge KASUBHAI. I developed what's often called sort of a "cheat sheet" for the bench of just the simple prescriptions, or language, that I could use to ensure access to the courts. That everybody who comes before the court can be acknowledged and identified in dignified ways.

And that related to the issue of the use of pronouns and honorifics such as Mr., or Ms., or Mx., and for that matter, Mrs. And so I invite people, when they come to court and introduce themselves, to offer their identity in the way of their honorifics.

Senator GRAHAM. Is that practice used by other judges, or do you know?

Judge KASUBHAI. I know that other judges identify their pronouns, for example, in their signature emails, and that other judges throughout the State, in Oregon, encourage people to identify their pronouns when coming into court so they, also, can ensure that people are dignified by identifying themselves in the courtroom.

Senator GRAHAM. I can't say the name of the—I guess it's the plaintiff here, somebody *v. the City of Eugene*. Are you familiar with that case? *B-O-U-D-J-E-R-A-D-A*.

Judge KASUBHAI. *Boudjerada*.

Senator GRAHAM. Yes. That case, is it—did that case come before you? Or did you rule that Eugene, Oregon's citywide curfew, in response to rioting, and looting, and acts of violence, was unconstitutional?

Judge KASUBHAI. Senator, under the First Amendment, and that was the structure and the analysis in that case, involved a time, place, and manner restriction on protests.

Senator GRAHAM. Do you think you appropriately applied existing precedent of Oregon law to this case?

Judge KASUBHAI. In every instance, Senator, I strive to apply binding precedent from the Ninth Circuit, as well as the Supreme Court.

Senator GRAHAM. Well, this one, to me, seems like legal gymnastics to get around the most recent case in Oregon, but that's just my opinion.

Further along, in this same case, you recently ruled, I think, Eugene's city manager and police chief are not entitled to qualified immunity regarding their decision to implement the curfew. Is that correct?

Judge KASUBHAI. In that follow-up opinion, after analyzing the issues of First Amendment and the time, place, and manner restrictions, I subsequently considered the issues with respect to several 1983 claims against individual officers, as well as the chief of police and the city manager.

In that opinion, I found that the individual officers were not subject to suit because of qualified immunity. But——

Senator GRAHAM. Well, I didn't ask you that. I asked you about the police chief.

Judge KASUBHAI. And with respect to the police chief and the city manager, in—with the actions that were taken, in light of what our—what I determined to be——

Senator GRAHAM. Right.

Judge KASUBHAI [continuing]. Clearly—a clear violation of a constitutional right——

Senator GRAHAM. One last question. How would you describe the violence and the destruction of property in Eugene, Oregon? How would you describe that?

Judge KASUBHAI. Senator, violence and destruction of property anywhere is——

Senator GRAHAM. Would you consider it a riot? A riot?

Judge KASUBHAI. Senator, the facts before me were involving the issues of whether the citywide curfew, as opposed to a curfew within narrow boundaries, was constitutionally appropriate.

Senator GRAHAM. I would encourage my colleagues to look at this particular scenario and make your own decision whether or not a curfew was justified. Thank you.

Chair DURBIN. Thanks, Senator Graham. Senator Whitehouse.

Senator WHITEHOUSE. Good morning, everyone. Congratulations on your nomination. I wish you well going forward. I was glad to see so many colleagues speak so highly of each of you.

I've been watching our court in Rhode Island, and also courts around the country, witnessing a very significant diminution in civil jury trials, jury trials generally, civil jury trials, in particular.

Some years ago, the then-chief judge of our Rhode Island District Court noted that they hadn't seen a civil jury trial in 3 years.

Now, with the appointments that we've made to that court, it has opened back up, if you will, and now civil jury trials are happening again. But civil jury trials have been, I think, considerably discouraged by actions of the Supreme Court, as it relates to rules of procedure. And even more discouraged by the Supreme Court, as it relates to agreements to handle matters through private mediation and arbitration, very often forced on consumers in massive contracts that they have no ability to negotiate.

So, I'm interested in hearing your thoughts on the role of the civil jury. I think our Founding Fathers saw it as not just a fact-finding adjunct to a judge, but actually an important part of our constitutional structure of governance.

And, in particular, those of you who've been magistrates, in some cases, it's the magistrate's job to try to make sure a case does not go to trial, and to put pressure on parties to settle so that the judge doesn't have to go through running a jury trial. And I want to make sure that that's not the way you behave, and that's not the way you would behave as a judge.

And I guess I'll just go right down the line, if you don't mind saying a quick word on your view of upholding the institution of jury trials, should you be confirmed. Judge Kasubhai.

Judge KASUBHAI. Senator, jury trials are enshrined in our Constitution within the body itself in the Sixth and Seventh Amendments. With respect to civil jury trials, they're a cornerstone to our democracy.

When Senator Merkley described a comment that I made about democracy works and only works when you shine the light on it, the juries are what bear witness to that which happens in our courtrooms and that which is determined to be fact or not. They are an incredible moderator to that which is, and which is not. And without the jury system to help set that tone, to set that model going forward, we lose a piece of our democracy.

Judge KAZEN. Senator, it's different—I understand your question to focus on jury trials in civil cases. There's a few things about that as I—well, I presided over my first jury trial as a judge within a few months of taking the bench as a magistrate judge. I do strongly believe in civil cases and the party's right to have their cases heard and have their issues aired in front of a jury.

As a lawyer, of course, that comes from my background of being primarily a civil trial lawyer. And so, I've believed in the right to get to a jury and to try cases. And it is, as I tell the jurors in the cases when we're doing jury selection, that their being there, they're participating in a fundamental right under our Constitution. They're participating in the Constitution. They're exercising their constitutional rights by participating. So I do believe it's a very important right.

Senator WHITEHOUSE. Judge Park.

Judge PARK. Most of my experience has been in the criminal jury trial system. However, I will share this, it is vital to our justice system to have jury trials.

I have had the pleasure of talking with jurors after the conclusion of their cases to ask them about their experience. And while

many are very honest and say they didn't, you know, coming in, they didn't necessarily want to serve, by the end of the trial, they were all honored to serve their country and to do their duty.

And they recognized the importance of that process to be a jury of their peers to an individual who has been charged with an offense. So I've recognized, and see, how vital jury trials are. And I would say, in the State of Hawaii, civil jury trials are happening all the time. So it's alive and well there.

Senator WHITEHOUSE. Mr. Semper, you'll be the last, because my time has just run out.

Mr. SEMPER. Thank you, Senator. I share the views of my colleagues. As a lawyer, I've spent a considerable amount of my time in front of juries putting important and difficult questions in front of them. I think the jury system is an indispensable feature of our legal system, and if I were so fortunate enough to be confirmed, I would certainly do what I could to facilitate the jury trial process.

Senator WHITEHOUSE. Thank you, Chairman.

Chair DURBIN. Thanks, Senator Whitehouse. Senator Cornyn.

Senator CORNYN. Judge Kazen, I'm glad that the Chairman asked you about your experience with naturalization ceremonies. My experience has been the same. It's one of the most positive, hopeful experiences that I've ever had, like you suggested participating in that process.

Of course, what we're talking about is legal immigration, which, I think, has been an important part of the lifeblood of our country, our culture, and our prosperity. Illegal immigration has been a disaster.

You are going to be sitting as an Article III district judge in a border city, Laredo, Texas. Right across the border, Nuevo Laredo, where, when I was in college, we used to go over to dine, and shop, and things like that. No one goes to Nuevo Laredo anymore because of the violence, and the kidnappings, and the like.

But can you just describe a little bit of the changes that you've seen in Laredo, a border city in Texas, over the last few years when it comes—in terms of the volume of migrants, the drugs, and the violence?

Judge KAZEN. Senator, of course, I've grown up and lived along the border my entire life. I've raised my daughter in Laredo, Texas. And so, you know, it's—we're part of the community.

It is—illegal immigration is a serious problem for the border communities, and the Nation in general. We see, of course, a heavy volume of immigration criminal cases in our courts. That makes up the majority of the cases that we deal with.

I don't personally, honestly, in my day-to-day life living in Laredo, I haven't experienced a particular change as a result of the immigration issues and the illegal immigration. But certainly, it is reflected in the volume of cases that we deal with. Even as a magistrate judge, I handle a lot of different pieces of those criminal cases and it is a serious issue that we deal with.

Senator CORNYN. Senator Whitehouse talked about the dearth of civil jury trials. Have the immigration docket and border courts like yours made it difficult to get to civil jury trials because of the volume of cases?

Judge KAZEN. Historically, that is exactly correct. I mean, traditionally over the years, it was my father, as a judge. As you know, we have deadlines to resolve civil cases. And so it's been the—we say at the courthouse is: The criminal docket is a jealous mistress, and it is difficult to focus attention on the civil docket seriously because of the heavy, heavy criminal docket that we have along the border.

And so one of the things I was told by my district judges that I was hired to do, as a magistrate judge, was to focus attention—because of my background experience with civil litigation, was to focus attention on the civil docket and try and get cases—civil cases to trial if the parties consented to me.

Senator CORNYN. Of course, there's probably no bigger impediment to access to the courts in a civil case than the cost of hiring counsel and the time it takes. And, in fact, if you look at the statistics, I think one of the reasons why there's so few civil jury trials these days is because the cost of litigation.

And I worry that, more than anything else, that we've priced access to justice in a civil case out of the price range for most litigants. Unless, of course, you happen to be catastrophically injured and are able to negotiate a contingent fee with the lawyer representing you, or perhaps you're hired by an insurance company, or some Fortune 500 company.

But that's just—that's a huge concern of mine. Not something you all can necessarily solve, but I think it's a huge problem for our country in terms of access to justice. There's no—I mean, you might as well put the lock on the front door of the courthouse for many people because they just can't afford to get there or the time it takes to get their case resolved.

Judge Kasubhai—if I'm pronouncing that correctly—let me just ask you—Senator Graham asked you about some comments in an Oregon State Bar Bulletin, I believe, entitled, "Is There a Place for Us?" You stated that, "We must set aside conventional ideas of proof when we're dealing with the interpersonal work of equity, diversity, and inclusion."

And in that same interview, you said, "As a judge, I can appreciate the challenge of employing a different mode for understanding truth." Could you explain what you meant by those words?

Judge KASUBHAI. Yes, Senator. First, I'd like to explain that in the course of all of the time that I've served on the courts, that the rules of evidence, the burdens of proof, the standards that have been established by the law and precedent, have always been that which I have followed and upheld.

Senator CORNYN. Well, that's reassuring, but you can understand why I would ask a question about different modes for understanding the truth and setting aside conventional ideas of proof. Are you talking about in the courtroom or outside of the courtroom?

Judge KASUBHAI. Absolutely not in the courtroom. What I was referring to was the idea of sitting down and talking with a friend from a different background. And when that friend from a different background might explain an experience, to be able to simply set aside the idea of saying, "Well, prove it to me," but simply accept

that that was that friend's experience, to understand where that friend was coming from.

So oftentimes lawyers could be accused of always trying a case no matter who they might be talking to, including friends. And so the idea of setting that normal skill and technique aside when talking with somebody, whether it be at a coffee shop, or even in a meeting, to be able to look at each other with dignity and understand that people have different experiences.

Senator CORNYN. Thank you. My time's up.

Chair DURBIN. Thanks, Senator Cornyn. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank you, all, for your service to your States and our Nation. And I'm really impressed by the distinction of your backgrounds and your determination to continue careers of public service. Thank you and congratulations.

Mr. Smith, I'm going to give you an opportunity to continue the response to Senator Whitehouse's question, because he didn't have time to finish, and it's an important question, if you have anything to add.

Mr. SMITH. Thank you, Senator. I appreciate the question and the opportunity to comment on it. Our—the Founding generation recognized the importance of the civil jury trial, right? It was enshrined in the Seventh Amendment. I do think it's one of the bulwarks of our legal justice system.

One of the things I would say is, both the Federal Rules of Civil Procedure, and, in slightly different language, the Federal Rules of Evidence, recognize that it is important for judges not just to ensure the just disposition of cases, but also the speedy and, to the extent possible, inexpensive disposition of cases.

And I do think that judges have a role in trying to help move cases along so that it can be possible for some parties to try their cases, because civil jury trials, like criminal jury trials, are very important, not just for ensuring just results, but also for giving citizens and members of the community an opportunity to participate in that process.

Senator BLUMENTHAL. Great. I noticed that you clerked for Judge Guido Calabresi, and then for Justice Souter, two members of the Federal bench. I know well Guido Calabresi has been a longtime friend in Connecticut, and then worked for the U.S. Attorney's Office in the Southern District of New York, and then went to Hawaii. How did you happen to go to Hawaii?

Mr. SMITH. Thank you, Senator. I really appreciate the question. My wife and I both grew up in Hawaii, and we'd always known that we wanted to move back home at some point.

I had been working in the Southern District of New York for about 6½ years, and in the summer of 2018, my son, my oldest child, was getting ready to start kindergarten. And when we got to that point, we were thinking about what kind of education, what kind of upbringing we wanted him to have. And obviously upbringing is great everywhere.

But for us, having grown up in Hawaii, a particularly special place for us, we wanted our children to grow up there. So that was one of the reasons why that was the time period where we decided to move.

Senator BLUMENTHAL. Well, Hawaii's gain was our loss on the East Coast, so. But congratulations.

Mr. SMITH. Thank you, Senator.

Senator BLUMENTHAL. Mr. Semper, you have extraordinary experience as a prosecutor. And now as deputy head of the Criminal Division in the U.S. Attorney's Office in New Jersey, I note that you were the lead prosecutor in the first homicide prosecution under New Jersey's domestic terrorism statute, if I have that correctly.

Mr. SEMPER. That's correct, Senator.

Senator BLUMENTHAL. Maybe you can impart to us some of the lessons of that prosecution and how we should be mindful of the need, either for strengthening our laws or in some ways reforming them, so as to focus on domestic terrorism, which I view as the most persistent and lethal threat to our internal security right now.

Mr. SEMPER. Thank you, Senator. In that particular case, the defendant was radicalized online. During the time of the incident, he had sought after a lot of material related to ISIS, and his ultimate goal was to go to Syria to join the caliphate.

During that radicalization process, he killed three men in his native State of Washington before coming to New Jersey, which he was going to use as a jump-off place to go to the Middle East before he ultimately took the life of the victim in our case.

The lessons that I learned in that particular matter was, one, it was a collective effort by law enforcement. We were very fortunate enough to have an intelligence-sharing apparatus between the local authorities in Washington, the Federal agencies who we worked with, and also our local authorities in New Jersey.

I have found generally, in my experience with law enforcement, that there is no "I" in "team," and collaboration is really key to identifying threats and neutralizing them. As far as the rest of it, the policy stuff, I would leave to you all, the experts. But certainly, it was a case unlike others I had dealt with, up to that point.

Senator BLUMENTHAL. Thank you. My time has expired, but I wish all of you well. You're going to be great judges, and you will be the face and voice of justice for most litigants who can't afford to take appeals, as you well know.

And I would just add my voice to others who talked about the immigration naturalization proceedings, which I do regularly. I'm going to be doing them this Friday in Connecticut. I love doing them. They give me hope and inspiration, especially as I get out of Washington from time to time. Thank you.

Chair DURBIN. Thanks, Senator Blumenthal. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thanks to all of you for being here, for your willingness to be considered for these important positions. Judge Kasubhai, I'd like to start with you, if that's all right.

A few months ago, in May of this year, you gave a presentation to the Oregon State Bar in which you included the following in your remarks, quote, "DEI, Diversity, Equity, and Inclusion, is the heart and soul of the court system. Can we say that? Yeah, I just did, and I say it proudly." Mr. Kasubhai, Judge, could you explain what that means?

Judge KASUBHAI. Yes. Access to justice is at the heart of the work that I do within the courtroom, and ensuring that everybody who—everybody is dignified and treated with dignity when they come into the courtroom, and for me to preside over those cases——

Senator LEE. Right. But you'd say that's the heart and soul of the judicial system more than equal justice under the law, more than the Constitution, more than the law itself, or the job of interpreting the law fairly, where litigants before you have disagreements as to the law's meaning?

Judge KASUBHAI. In the way in which, and in the context in which, I was using the term and referring to diversity, was the idea and the ideal of equal justice under the law. That everybody, no matter what their background, beliefs—whatever that might be, that everyone is entitled to access to the courts, and that equity.

Senator LEE. All right. Let's circle back to that one in a minute.

The First Amendment's protection of free speech is foundational. It's been described as one of our first freedoms. It's been described accurately, I think, fairly by many, as being upstream from all of our other rights, and it has to be protected vigorously. And we also know that there are time, place, and manner accommodations that can go along with that.

Among other things, there are special exceptions that occur where riot control measures are necessary due to an outbreak of coordinated overt violence.

In a case that's been referred to briefly in the hearing today, but not much, this *Boudjerada v. City of Eugene*, you're dealing with some interesting circumstances. You had riots taking place—there were three nights of terror in Eugene, Oregon, during the BLM riots of 2020, where, in your words, the following was going on, quote, "A crowd applying graffiti, lighting fireworks, and blocking traffic, throwing glass bottles toward officers, surrounding a patrol car, smashing its windows and puncturing its tires"—with the officers inside the patrol car, mind you.

The group, quote, "started fires in the roadway, attacked people in vehicles in the downtown area. Several businesses were vandalized and looted, and several officers were injured." You went on to state that, "Members of the group carried heavy backpacks and bottles, and were communicating via radios."

So, in response to this, the city implemented some riot control measures. They imposed a citywide curfew, one that lasted 7 hours. We had three rioters who were arrested during the curfew, and despite the Ninth Circuit precedent in the *Menotti* case, addressing a very similar curfew in Seattle, you decided that the Eugene, Oregon, curfew was unconstitutional.

Can you explain to me how consistent with the Ninth Circuit precedent in the *Menotti* case—how does a 7-hour curfew through the middle of the night in the wave of such destruction and terror prevent ample means of communication? Can you explain that to me?

Judge KASUBHAI. The *Menotti* case did provide guidance and assisted me in evaluating the legal analysis that I applied.

There were two curfews that had been imposed. One was a downtown curfew, so there were geographic restrictions. That was not the curfew that was before me, nor did I find that unconstitutional.

It was a citywide curfew that actually subjected everybody in the city, well beyond the boundaries of downtown, to out into the residential neighborhoods such that the application of that curfew—that citywide curfew—could have criminalized people's behavior of just trying to get home, well outside of any of the riots and the protests.

Senator LEE. You've praised Ibram X. Kendi as someone who you like, as an amazing historian and author. And you said that you've liked—you would like to push some of Ibram X. Kendi's ideas even further.

I'm sure you're aware, he's famous for saying, quote, "The only remedy to racist discrimination is anti-racist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination." Kendi also stated that, "In order to truly be an anti-racist, you have to be anti-capitalist."

So I'd like to know, first of all, what would you do to push Ibram Kendi's ideas even further? And do you believe someone should be praising—someone who is currently a Federal magistrate judge, be praising someone who encourages discrimination in any circumstance?

Judge KASUBHAI. Senator, I don't recall having ever remarked that I want to push Ibram Kendi's ideas further. In questions earlier in this hearing, I clearly stated that the ideas that have been described here, that have been attributed to Ibram Kendi, are not ideas that are consistent with the 20 years in my public service, 16 as a judge.

And the record that I have shown striving to apply the law, the Constitution, and Supreme Court precedent, would not be consistent with this idea of supporting the ideas that you've described as Ibram Kendi's.

Senator LEE. So you're saying that you have never said that you would like to push some of Ibram Kendi's ideas further?

Judge KASUBHAI. Senator, I don't recall having made that particular statement.

Senator LEE. Okay. I see my time has expired. We'll follow up on these in writing. These are concerning. One of the most fundamental laws we have that's embedded within our Constitution is that governments can't treat people differently on the basis of their race, and that's why this is important to ask you about. Thank you.

Chair DURBIN. Judge Kasubhai, this case, *Boudjerada* case, has come up several times. Can you tell me, was that subject to review by the district court? How did they view your ruling?

Judge KASUBHAI. That was a case in which the parties had not consented, and it was reviewed by a district judge and adopted without opinion on the issue of the constitutionality finding, with respect to the curfew. The follow-up finding and recommendation is still before the district judge and is on review.

Chair DURBIN. I see. I believe that we have Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. Congratulations to each of you. To ensure the fitness of nominees before any of the

Committees on which I sit, I ask the following two initial questions. So we will just go right down the line, starting with Judge Kasubhai.

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

Judge KASUBHAI. No, Senator.

Judge KAZEN. No, Senator.

Judge PARK. No, Senator.

Mr. SEMPER. No, Senator.

Mr. SMITH. No, Senator.

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

Judge KASUBHAI. No, Senator.

Judge KAZEN. No, Senator.

Judge PARK. No, Senator.

Mr. SEMPER. No, Senator.

Mr. SMITH. No, Senator.

Senator HIRONO. For Judge Park, you spent the majority of your career working in the Office of the Public Defender for Hawaii. Public defenders play a vital role in the justice system by ensuring that all defendants, regardless of means, have their constitutional rights to counsel.

Can you speak, briefly, to the importance of having strong prosecutors and defense attorneys in our adversarial justice system?

Judge PARK. Thank you, Senator. The Sixth Amendment requires that there is a right to counsel. And the reason why that is, is so that there can be a balance of power with respect to these cases.

Individuals who are charged with an offense are simply charged. The Government has the burden of proof, and to prove that charge beyond a reasonable doubt. And it is necessary to have attorneys represent these individuals in order to hold the Government to that high burden of proof that is required under the law.

And so that is something that I did for 20 years. And I find that the right to counsel pursuant to the Sixth Amendment is vital in order to have a fair and just legal system.

Senator HIRONO. For both you, and Mr. Smith, parents can have a profound impact on our lives.

Mr. Smith, your father immigrated to this country from Honduras. After completing seminary, he worked his way through college as a janitor, and went on to earn a doctorate and become a professor.

Judge Park, your father spent a long career on the Honolulu police force rising to the rank of major, and serving as president of the police officers' union.

For both of you, how have your parents' experiences impacted your lives and your careers? And this includes your mothers, although I just mentioned your fathers. Go ahead. Judge Park.

Judge PARK. I had the honor of witnessing my father work hard as a Honolulu police officer. His example of public service is what drives me to this day. Growing up, I used to paddle canoe, and didn't want to catch the bus home after being wet for so long, and would go to the Honolulu Police Department and sit until my father was ready to come home.

But he was so dedicated to his job, and doing the investigations that he did inspire me. And so he was vital to my decision to enter into the law. And my mom's support of him throughout his legal career was critical. My dad would not have been able to do the level of police work that he did without her love and support.

Senator HIRONO. And he would agree with that.

Judge PARK. And he would agree with that.

Senator HIRONO. Mr. Smith.

Mr. SMITH. Thank you, Senator. When you're fortunate, as Judge Park and I were, to have the kinds of parents we did, your parents help you see what's possible just watching their life stories. The things that they were able to do, from where they started and where they ended up, makes it possible for their children to think the same thing. And I know that my siblings and I all feel that way.

Since my father was already discussed a little bit, let me say just a few things about my mother. My mother became a Head Start teacher, a substitute teacher in public school. I remember having her in one of my classes at least once. And as a kid, that's always embarrassing.

[Laughter.]

Mr. SMITH. And you know, in the summer, she would sometimes work shifts at Kmart to help pay the bills. And, I think, when you see a parent just dedicating themselves to helping their families do well, it teaches you those values.

Senator HIRONO. In the brief time that I have left, again, for both of you, Judge Park and Mr. Smith: Judge Park, you would be the first Native Hawaiian woman to serve in the Federal district court; Mr. Smith, your father, as I said, is an immigrant from Honduras, and your mother is of Japanese ancestry. In my view, the judiciary should reflect that diversity of our Nation, and both of you reflect the vibrant diversity of Hawaii. Could you just, very briefly, talk about why diversity is so important, as I assume it is important, to each of you?

Judge PARK. I think diversity is important, both personal and professional diversity on the bench, because a diverse bench represents the community that it serves. And when you have a diverse bench it builds and brings integrity to the institution. And so I think it is very important.

Senator HIRONO. Mr. Smith?

Mr. SMITH. Thank you, Senator. I think diversity in its broadest sense is very important. And I do agree with Judge Park that when the community sees that the bench, and all positions of public importance, are open to everyone from all sorts of walks of life, backgrounds, perspective, it promotes and ensures trust in those institutions.

Senator HIRONO. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Hirono. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. Judge Kasubhai, I'm looking at an order you issued as a magistrate judge, here, requiring the use of pronouns in your court. Do you require the use of pronouns, the declaration of one's pronouns in your court?

Judge KASUBHAI. Senator, that may be referring to perhaps a trial management order or a scheduling order of some kind?

Senator KENNEDY. Yes—no, it's a statement. You issued it. Here it is.

Judge KASUBHAI. Oh, it's an invitation for people to identify their pronouns and/or their honorifics.

Senator KENNEDY. I'm looking at your requirement that you issued to all people in your court. You say, quote, "When you introduce yourself in a meeting, you should say, 'My name is Judge Blank, and my pronouns are blank'." Is that right?

Judge KASUBHAI. Senator, those were not requirements or rules. Those were suggestions and——

Senator KENNEDY. They were suggestions?

Judge KASUBHAI. Those were suggestions and invitations——

Senator KENNEDY. Okay.

Judge KASUBHAI [continuing]. For people to use.

Senator KENNEDY. And you also, in your directive, you say, quote, "I'd like counsel to . . . introduce themselves giving your full name and your honorific, such as"—M-S period, "Ms., Mx., or Mr.,"—not Mrs., "and if your client will be making an appearance, I ask you to please introduce them to the Court by giving me their full name and their honorific, such as"—M-S period, "Ms., Mx., or Mr.," end quote. Is that right?

Judge KASUBHAI. Senator, it's not a directive. Again, it's an invitation for people to——

Senator KENNEDY. Oh——

Judge KASUBHAI [continuing]. Introduce themselves.

Senator KENNEDY [continuing]. It's an invitation?

Judge KASUBHAI. Yes.

Senator KENNEDY. Okay. All right.

I'm looking at an article from the Oregon State Bar Bulletin from May of 2021, and I want to read one of your quotes. Quote: "We have to set aside conventional ideas of proof." Let me say that again. "We have to set aside conventional ideas of proof," you said, "when we are dealing with the personal and interpersonal work of equity, division, and inclusion. As a judge, I can appreciate the challenge of employing a different mode for understanding truth than that which most lawyers are accustomed to in our work," end quote. Did you write that?

Judge KASUBHAI. That is a quote from that article.

Senator KENNEDY. So, when we're dealing with equity, diversity, and inclusion, we should set aside conventional ideas of proof. Is that right?

Judge KASUBHAI. In the larger context of interpersonal and personal relationships, the idea of being able to have a conversation with somebody——

Senator KENNEDY. Yes. But you didn't talk about a conversation. You said proof.

Judge KASUBHAI. It's in the context of having a conversation with somebody about the issue of their background——

Senator KENNEDY. So——

Judge KASUBHAI [continuing]. And their experience.

Senator KENNEDY [continuing]. When the issue is equity, diversity, or inclusion, we should have a different set of proof. Is that right?

Judge KASUBHAI. When it comes to the space in which people have interpersonal relationships with one another, the idea of respecting and dignifying each other with their experiences is an important part of——

Senator KENNEDY. So—so all issues have one set of proof, which has been handed down by our State supreme courts, our U.S. Supreme Court, except, you think we ought to have a different set of proof when equity, diversity, and inclusion are at issue. Is that right?

Judge KASUBHAI. In all of my years on the bench, Senator, I have applied the law, the rules of evidence——

Senator KENNEDY. Okay.

Judge KASUBHAI [continuing]. The case precedent.

Senator KENNEDY. Let me move on. I'm looking at the notes you gave us from a speech you made in February 7th, 2020. It's entitled, speech, "Reflections on Equity and Privilege," to the Oregon Blacks in Government. You wrote, quote, "White male straight people allow privilege to remain in place," closed quote. Did you say that? Did you write that?

Judge KASUBHAI. Without looking at the specific——

Senator KENNEDY. Here it is——

Judge KASUBHAI [continuing]. Speech here——

Senator KENNEDY [continuing]. You turned it in.

Judge KASUBHAI. Well, if that's on the piece of paper, Senator, then I have——

Senator KENNEDY. Okay.

Judge KASUBHAI [continuing]. No reason to——

Senator KENNEDY. You also wrote, quote, "Privilege is incredibly similar to narcissistic personality disorder," closed quote. Did you write that?

Judge KASUBHAI. Without looking at everything in the context of that statement, it appears correct.

Senator KENNEDY. Okay. You wrote, quote, "The identity of Muslims also need to be normalized in a country that is so deeply Islamophobic." Did you write that?

Judge KASUBHAI. Senator, I did. And what I'd also like to clarify is that in the context of my work on the bench, I have treated everybody equally without regard——

Senator KENNEDY. I understand.

Judge KASUBHAI [continuing]. To their background——

Senator KENNEDY. I'm sorry. I just want to get through this. I'm going to run out of time. You also wrote, quote, "I am disappointed about the way in which the Founding Fathers of this country perpetuated inequity," closed quote. Did you write that?

Judge KASUBHAI. In the context of the issue of slavery, that was something that I had——

Senator KENNEDY. Okay.

Judge KASUBHAI [continuing]. Been considering.

Senator KENNEDY. You know, your notes you gave us from a speech on May 17th, 2023, "Does Race Matter?" you said, quote—quote,"Does race matter? Hell yes," closed quote. "You know that T-shirt at the Saturday markets, the one that says something like, 'Love sees no color,' and it has all the colors of the rainbow all over it, and it's like a tie dye shirt. Well, the first time I saw it, I said,

'Ah, how sweet.' Then I got angry. If love doesn't see color, then I don't have allies," closed quote. Did you say that?

Judge KASUBHAI. Yes. And that was to explain that the work of equity is to help understand where people are coming from, not to ignore who they are.

Senator KENNEDY. And you also——

[Gavel is tapped.]

Chair DURBIN. Senator, the time.

Senator KENNEDY. Yes, I know. I'm sorry. Can I have 30 more seconds?

Chair DURBIN. Thirty more seconds, Senator.

Senator KENNEDY. Judge, you seem to be obsessed with race and sexuality. I mean, you even go so far as to say that when race, and sexuality, and diversity, and inclusion are at issue, we need a separate standard of proof in the United States Federal judiciary. How are litigants going to be able to trust you?

Judge KASUBHAI. Senator, that's not what I've said. There is——

Senator KENNEDY. Sure you did——

Judge KASUBHAI [continuing]. No different standard——

Senator KENNEDY [continuing]. Sure you did, it's bigger than Dallas. I read it to you.

Judge KASUBHAI [continuing]. When you look at——

Senator KENNEDY. You turned in these documents. I didn't go looking for them.

Judge KASUBHAI. When you look——

Senator KENNEDY. You seem proud of it.

Judge KASUBHAI. As anyone who reviews my record on the bench——

Senator KENNEDY. I have.

Judge KASUBHAI [continuing]. Thousands of cases——

[Gavel is tapped.]

Chair DURBIN. I'm going to let you finish responding and we're—your time has expired, but go ahead.

Judge KASUBHAI. The rule of law is an absolute for me, the work that I have done on the bench over the last 16——

Senator KENNEDY. That's not what you say.

Judge KASUBHAI [continuing]. The work that I've done on the bench——

Senator KENNEDY. But that's not what you say.

Chair DURBIN. Judge, finish your sentence.

Judge KASUBHAI. The work that I've done on the bench in ruling over all the people's cases that have appeared in front of me, from all backgrounds of all faiths, you'll find that I have upheld the rule of law, and upheld the precedent of our Constitution, and our Supreme Court, and the Ninth Circuit.

Senator KENNEDY. Well, if this Chairman would give me time, I could go through the cases and prove——

Chair DURBIN. Well——

Senator KENNEDY [continuing]. That that's not the case.

Chair DURBIN. Senator——

Senator KENNEDY. I just don't see how you can be a fair-minded judge.

Chair DURBIN. Senator Booker.

Senator BOOKER. Thank you very much. Mr. Kasubhai, I—my favorite author is James Baldwin. Would you—love his books, quote from his books—would you make the presumption that I agree with everything James Baldwin has said?

Judge KASUBHAI. I wouldn't presume that, Senator.

Senator BOOKER. I read my colleague J.D. Vance's book, "Hillbilly Elegy." I have bought it for other people. Would you think to ascribe to me all the views of my colleague, J.D. Vance?

Judge KASUBHAI. No, sir.

Senator BOOKER. I have a little—forgive me, this is a little petty. I'm about to do this, but—I have bought Senator Cotton's book. I bought it because he didn't give it to me.

[Laughter.]

That's the petty part, I apologize. It's actually a real——

Senator COTTON. I'll still sign it for you, though, if you want to.

[Laughter.]

Senator BOOKER. But it is actually pretty extraordinary. Senator Cotton surprised me. He's quite a historian. Would you ascribe to me all the views of Senator Cotton?

Judge KASUBHAI. No, sir.

Senator BOOKER. Even if I've quoted from his book——

Senator COTTON. But you should.

[Laughter.]

Senator BOOKER. Even if I've quoted from his book, would you do that?

Judge KASUBHAI. I would not, sir.

Senator BOOKER. So the book that's been brought up, "How to Be an Antiracist," which was on Time Magazine's must-read list, which was a runaway bestselling book—would it be a mistake for anybody to ascribe to you all the views of the author?

Judge KASUBHAI. It would.

Senator BOOKER. Yes, absolutely. I agree that there's some points in the book that are worth quoting, and I can't—I don't remember, but I imagine I may have. But there are definitely parts of the book that I don't agree with, as well. And I—that's the same for you.

Judge KASUBHAI. It is correct, sir.

Senator BOOKER. Does my race matter?

Judge KASUBHAI. Without going into a couple of hours of a conversation, Senator, it depends on both the person as well as how people perceive them.

Senator BOOKER. But isn't that the point? Like, what a crazy question: My race, does it matter? It's such a hotbed of discussion in America now. It's often very polarizing. But the truth of the matter is, it's part of my identity. I'm a Christian, I'm an American, I'm a Black guy. And to me, obviously, those are identifying features that matter.

Within the criminal justice system, would it be fair to have a judiciary that did not have African Americans?

Judge KASUBHAI. It's important for diversity to be represented on the bench. Experience is the life of the law.

Senator BOOKER. Right. Because the law is independent in many ways—should be, I should say, independent of racial reasoning when applying the facts of the law. Right?

Judge KASUBHAI. Correct.

Senator BOOKER. But I've seen lots of studies, you don't need to comment on, about implicit racial bias in the law. We know from the data that if you control for other factors—income, geography, education—that African Americans in the criminal justice system have tended to get longer sentences for similar crimes. Are you aware of that research?

Judge KASUBHAI. I'm aware of that research.

Senator BOOKER. Right. And so the idea that diversity is important to talk about, to have a criminal justice system that reflects the diversity of the population. Many people, even if it's just for the matter of faith in the system of minority groups, one would say that diversity is very important. Yes?

Judge KASUBHAI. Absolutely.

Senator BOOKER. But I think there's at least a spirit that I'm feeling that your views on the importance of diversity—urgency, I would say, of diversity, that your understanding that the legitimacy of the courts, your understanding that everybody from Harvard Business School to consulting companies, like McKinsey, have said diverse teams are better teams.

There's some kind of confusion with, perhaps, those so strong beliefs and your ability to be an objective judge in legal matters and to apply the law. And I would just like to ask you, when it comes to the cases that come before you, what is the process by which you go about to coming to conclusions?

Judge KASUBHAI. Senator, it's a very stringent—stringent and rigorous process. It starts with reading the briefs, and then reading them again, and making sure I understand the issues that have been raised before me, the law that is being applied and invoked by the parties.

And then working through each and every one of those arguments, and understanding the rules that are being invoked, and testing—testing the hypotheses that the parties are making in their arguments——

Senator BOOKER. Right.

Judge KASUBHAI [continuing]. Over and over and——

Senator BOOKER. Yes.

Judge KASUBHAI [continuing]. Over again.

Senator BOOKER. And so I don't need to go through the rigorous processes, but I just—you don't care what their pronouns are when you're applying the law.

Judge KASUBHAI. Absolutely not.

Senator BOOKER. You don't care the color of their skin when you're applying the law.

Judge KASUBHAI. Most certainly not.

Senator BOOKER. Yes. You are applying the law, even though you do believe, like most of the people around this dais, that having diverse teams is a good thing for America. When it comes to doing your job, you have a rigorous processes of which these things don't enter.

Judge KASUBHAI. You said it better than I could, Senator.

Senator BOOKER. Thank you very much. The last thing I just want to say is to Jamel Semper: Your mother is extraordinary. Is that true or false?

[Laughter.]

Senator BOOKER. That is a trick question.

Mr. SEMPER. Senator——

Senator BOOKER. You know you're under oath, yes?

Mr. SEMPER. Senator, before God and country, my mother is quite extraordinary.

Senator BOOKER. She is an immigrant to this country. Yes?

Mr. SEMPER. Yes. Yes, she is.

Senator BOOKER. She has two extraordinary children, from my understanding. Right?

Mr. SEMPER. She does.

Senator BOOKER. You and your brother?

Mr. SEMPER. Yes.

Senator BOOKER. Your brother got cancer in his 9/11-related heroism. Yes?

Mr. SEMPER. Yes. Yes, he has. Yes, he has.

Senator BOOKER. Yes. And he has been supportive of you because he's the older brother. Right?

Mr. SEMPER. Yes. He and my mother helped put me through law school. I'm incredibly grateful for them.

Senator BOOKER. Right, right. So you will do right by this country if you should you get this position?

Mr. SEMPER. Senator, if I am fortunate enough to be confirmed for this position, I will do all that I can to serve.

Senator BOOKER. And you will do right by your mama. Right?

Mr. SEMPER. I have and I will.

Senator BOOKER. Thank you very much, Mr. Chairman.

Mr. SEMPER. Thank you.

Chair DURBIN. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. And congratulations to each of you on your nominations. And it's so wonderful to hear your introductions of your families. And I'm so pleased, Mr. Semper, that you now have a Congressional edict to be good to your mama.

[Laughter.]

I think that is just awesome. We mamas like things like that.

We're also informed by looking at your records and reading your writings. And Judge Kasubhai, I want to come to you because as I looked at some of your readings and writings, your decisions, you seem to have an affinity for Marxism.

And in a 1994 essay, you criticize the concept of private property. And I'm going to quote you here. You argued that, and I quote, "Property incites rebellion," end quote. And this is one of the many positive statements that you have made about Marxist approaches and Marxist policies, Marxism.

And, you know, President Reagan—as I was reading some of your things that leaned toward Marxism, I thought of President Reagan's comments when he said that the march of freedom and democracy would leave Marxism on the ash heap of history. And that's exactly where it belongs, because Marxist regimes, as of 2023, have been responsible for the deaths of over 100 million people.

So, it disturbs me when I see this leaning to Marxism in your writings. So, a yes-or-no question: Are you a Marxist?

Judge KASUBHAI. No, Senator.

Senator BLACKBURN. Okay. Will you, right now, disavow the tenets of Marxism that you have praised in some of your writings?

Judge KASUBHAI. Senator, I have not praised Marxist ideas, and I would disavow any other system than that which is—than that would have—be supported by our U.S. Constitution and our laws.

Senator BLACKBURN. I appreciate your comment, but sir, in your writings you have given the opposite opinion. But you've also made a number of concerning statements regarding sexuality and the disempowerment of women.

Specifically, you've aligned yourself philosophically with a professor who has espoused the disturbing views that all heterosexual relationships are, per se, infused with violence, and that all sexual acts should be viewed as rape.

Not only is this view wrong and offensive, but also, and perhaps more importantly, it undercuts the important work that is being done across this country to empower survivors of sexual assault.

When you say that all sexual acts are rape, you delegitimize and silence women who actually are victims of sexual assault. So, how can women possibly trust that they will be treated fairly in your courtroom given your disturbing views on this subject?

Judge KASUBHAI. Senator, that law review article to which you're referring, I believe was published—I wrote in 1995. I did not align myself with those ideas. The law review article summarizes several different theories of laws——

Senator BLACKBURN. We're familiar with the article. Do you regret citing these very concerning statements?

Judge KASUBHAI. Senator, the description or summary of these different theories is not a subscription to, or an attestation of, the validity of——

Senator BLACKBURN. Do you denounce the view that all women are, per se, disempowered by our system?

Judge KASUBHAI. I do not ascribe to those theories that I was summarizing in that article. And I would also turn to my years of serving on the bench and treating all people fairly——

Senator BLACKBURN. Let me—let me move on. I've got 30 seconds.

I also was troubled by your involvement as the prosecutor in the *Gonzalez* case. Mr. Gonzalez was arrested for allegedly raping a 12-year-old little girl. The FBI eventually reviewed the media seized from his home and identified horrific images of child sexual abuse.

The sentencing memo that you prepared—oh, this is for Mr. Smith. Your sentencing memo, you outlined Mr. Gonzalez's heinous crimes. The images that were found on his phone were created in his home, in his own bedroom, with girls as young as 10 years old.

And they found out he had parties, he would offer them illicit substances, he would then abuse them. And he did this multiple times over a 15-year period of time. It started in 1997, and still, with all of that information, you went far below the guidelines.

And, in fact, for this repeat child abuser, you recommended a sentence of just over 10 years, and he had done this to kids for 15 years. So, why did you do that?

Mr. SMITH. Thank you for the question, Senator. I do recall the case of Mr. Gonzalez. That was a case that, I believe, I was as-

signed when I had just started in the Office. I recognized immediately the seriousness of those offenses, and, I believe, I had Mr. Gonzalez prosecuted within a month or so of my having been assigned the case.

When I make sentencing recommendations in court, especially as a new prosecutor in the General Crimes Unit in the Southern District of New York, I make those sentencing——

Senator BLACKBURN. Okay.

Mr. SMITH [continuing]. Recommendations——

Senator BLACKBURN. Well, the court rejected your recommendation. They went above you, to 15 years, and then gave him an additional 10 years of probation. This is something that is terribly concerning to me. Thank you, Mr. Chairman.

Chair DURBIN. I'm going to let Mr. Smith finish his answer to your inquiry.

Mr. SMITH. Thank you, Chair Durbin. I just wanted to mention, particularly in the General Crimes Unit in the Southern District of New York, the sentencing recommendations that we make are in close consultation with our supervisors, considering all of the 3553(a) factors.

And so when I appear in that forum, I'm representing the Office, and I do that as a prosecutor in all of my cases. I am not speaking on behalf of my own personal views. I try to set those things aside. And I try to represent the Office.

If I were fortunate to be confirmed, I would do the same as a judge. I would set any personal views aside, and I would endeavor to apply the law faithfully and define the facts fairly.

Chair DURBIN. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair. First of all, congratulations to each of you for the nomination and for the opportunity to be here today. In preparation, I'd be shocked if you haven't been advised that when it comes to be Senator Padilla's turn, here's a question to anticipate.

Diversity is a beautiful thing. It's one of the biggest strengths of our Nation—not just across the board, not just in communities, not just in government, but in, particularly, the Federal judiciary.

I know my colleague, Senator Hirono, asked a general question about diversity. I always ask about diversity because diversity's important, not just in terms of who sits on the Federal bench, right? The diversity of life experience, the diversity of professional experience ought to be part of the processing considered, not just for more inclusive or reflective outcomes, but for public confidence in the Federal judiciary and its decisions.

All that being said, what I tend to ask nominees is, what would you do, if you're fortunate enough to be confirmed, to advance diversity in your courtroom, if you agree with my value statement? And if you disagree, I'd love to hear it. And not just broadly with support staff and whatnot, but particularly when it comes to law clerks. I think most of you may have a specific example or experience where a quality clerkship experience can really help a career at the outset.

Whether you pursue public service, whether you pursue private practice, that clerkship opportunity can be pivotal.

So, what can we do to open the door to that experience for a more diverse group of young law students and law clerks than we have historically? And we'll start with Mr. Kasubhai.

Judge KASUBHAI. Senator, I agree with your value statement, and with respect to the work on the court, it's absolutely important to bring diversity and diverse experiences from all backgrounds, to staff, that's important, but law clerks. Over the 16 years that I've served on the bench, I've worked hard to ensure that I have a diverse group of law clerks that have worked with me throughout all of these years.

But we have to go further than that. It has to be externs. People from law school, students, and then reaching out into the community to high school, and middle school, to make sure that people are thinking about law school, not just at the last minute, but their entire lives.

Senator PADILLA. Thank you.

Judge KAZEN. Senator, I agree that diversity is important. Over the last 5 years as a Federal magistrate judge, I have hired law clerks from different geographic backgrounds, religions, genders, of course, law schools, and just, you know, national origin, and race. But, you know, all those experiences, I believe, are important to enrich and give different perspectives on backgrounds. And so it is something that I'll continue to do with the law clerks that I hire.

Judge PARK. I started my legal career as a law clerk to a magistrate judge, and I know the value that that clerkship provided to me and the doors that it opened. When I look to hire, not only law clerks but interns and externs that help and assist in my chambers, I do look at not only their personal diversity, but their professional diversity. And that is important to me when I make that decision on who to hire.

Mr. SEMPER. Thank you, Senator. I agree with the comments of my colleagues. I think diversity is very important. I think it helps to—when you draw more people into our institutions, particularly institutions like the judicial system, I think that helps to affirm the confidence that the community must have in our institutions. I would also just say, I think academic diversity is important, as well.

I came from a State law school, and, you know, these positions, they are great, and they are stocked with a lot of people from the top schools. But I think there's a lot of talent within our State schools. And so, if I were fortunate enough to be confirmed for this position, I would have an eye toward that, as well.

Mr. SMITH. Thank you, Senator. I don't think I could say it better than my fellow nominees. I agree that diversity is important in its broadest sense. And I also agree the legal clerkships at the beginning, especially—really at any point in a nominee's career—are incredibly important. They were certainly important experiences for me and I would be carefully trying to pick the best people for those positions, recognizing their importance.

Senator PADILLA. Thank you very much. Mr. Chair, before I close, I just want to clarify that there's still an opportunity. The deadline for letters for the record, that are support for these nominees, is still open.

Chair DURBIN. Yes.

Senator PADILLA. So there's still time for Mr. Semper's mom to weigh in here——

[Laughter.]

Senator PADILLA [continuing]. If necessary. Thank you.

Mr. SEMPER. I'll do some lobbying. Thank you.

Chair DURBIN. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

Judge Kasubhai, I think your fellow nominees owe you a debt of gratitude, because many Biden nominees have been extreme, but your record is so far out of the mainstream that you have attracted virtually all of the questions.

I was particularly intrigued by your statement to Senator Blackburn that you said you are not, in fact, a Marxist. And then you said, and I wrote it down, "I have not praised Marxist ideas."

Now, as you know, in law, there is the fact of evidence. And so let's go to something you wrote. An article that is entitled, "Sensualized Property Theory," in which you wrote—it begins, it's on the front page of your law school newspaper.

You write, quote, "Intimate knowing, the lovers kissed, familiar and ever exciting, passionate transcendence beyond the physical exhilaration lies a burning light in our limbs, our hearts. Floating, flying, falling in every direction, amorphous and wonderful, time stretching, space curving, exquisitely explosive eros, and yet, I timidly tremble every time."

Now, somehow, this is about property, which is not immediately evident as to why.

But later, in the article, you write—you say, "Property is not simply a relationship between an owner and an object of ownership. Property is primarily a complex relationship between people, and secondarily regards the objects people exploit.

"Historically, three paradigms have dominated European notions of property. Locke appealed to the notion that labor points to who has the right to exploit property. Bentham relied on utility to dictate who has rights based on how the property is exploited. And Marx was plainly disgusted with the alienation that property imposed, and its establishment of an 'us' and 'them,' and 'haves' and 'have-nots.'

"Each theory alone denies important components of human experience. Among them are the ability to work, the need for personal privacy and boundaries, and uniquely diverse desires, which spin us all in differing life directions. However, the process toward integrating all three may provide a framework for relationships that enhances each unique self. The aspiration toward intimate knowing, the intimate knowing of oneself and others is a creative struggle toward redefining property."

What the hell does that mean?

Judge KASUBHAI. Senator, when I was preparing and reviewing my materials for this hearing and for the process, I also have to admit that that writing was far from clear or articulate, and the poetry was definitely not good. Now, Senator, I don't make——

Senator CRUZ. Do you believe we need to have a creative struggle toward redefining property, which is what you were advocating for?

Judge KASUBHAI. You know, that was something that I wrote 30 years ago, Senator. And in the course of just, you know, exploring law school and the ideas that came with——

Senator CRUZ. Okay. So your flirtations with Marxism were 30 years ago. So let's go more recent.

In 2020, you gave a speech entitled, "Reflections on Equity and Privilege," and you said, quote, "First, the world is wide enough for all of us. Privilege derives its power from the belief in scarcity: scarcity of money, natural resources, food, and power itself. The desire to control it all drives privilege. I want to suggest to you that equity, the idea of equity, rejects this model of scarcity."

Now, that's Marxism in 2020. What did that mean?

Judge KASUBHAI. I've never considered that to be Marxist, Senator. It's the idea that equal access, and in the context of the work that I do here——

Senator CRUZ. So, there is no scarcity. There are no property rights. Equity gives everyone an entitlement to each other's property. Is that right?

Judge KASUBHAI. Not at all. And in the context of the work that I do on the bench, Senator, when you look at my record for all of these 16 years, you'll find that I have upheld the Constitution and our case precedent.

Senator CRUZ. Okay. Well, let's turn to something else you wrote in the Wisconsin Women's Law Journal—again, this is your writing. The name of the article is "Destabilizing Power in Rape: Why Consent Theory in Rape Law Is Turned on its Head." You cited Professor Catharine MacKinnon, who argued, quote, "sexuality itself is a power web in which heterosexual relations, per se, are infused with violence and control." And, quote, "Most intercourse is rape."

Now, her views are extreme. And yet—and when Senator Blackburn asked you about them here at the hearing, when you want to be confirmed, you try to distance yourself from them.

But here's what you wrote in the article. You embrace those views. You wrote, quote, "I employ the view that 'rape is sex' in order to focus on the significance of consent in rape law. The sex act is a violation, per se, without consent. In order to properly align the consent doctrine in rape law with consent in other areas of the law, non-consent must be presumed."

Do you believe that is a mainstream view that—that heterosexual sex is rape?

Judge KASUBHAI. Senator, in that article, I was exploring different ideas and theories, and I was employing the hypothetical that you've just described to try to tease out a particular issue with respect to consent. With respect to your last question——

Senator CRUZ. So, you also quoted Professor MacKinnon, who wrote, quote, "sexuality is to feminism, what work is to Marxism."

Let me ask you again, what does that mean?

Judge KASUBHAI. Senator, I was summarizing different theories that people were presenting, so that way I could explain them and then employ an analysis with respect to the issue of what consent was, in the context of sexual assault back in, 30 years ago.

Senator CRUZ. I think your views are far, far out of the mainstream.

Chair DURBIN. Senator Welch.

Senator WELCH. Thank you very much. I'm going to ask Judge Park, you're the—I'm a public defender. I think I'm the only one in the Senate, and I've been delighted at the number of public defenders who've been nominated. And our Constitution, of course, provides for the right of us, all, as advocate for everyone charged with a crime, because it is about the process, not the individual.

I just want to ask you if you agree, and I'm sure you do, about the necessity for zealous advocacy from the defense, as well as from the prosecutors. And if so, why?

Judge PARK. It is necessary in order to have a fair and just criminal——

Senator WELCH. Is your microphone on?

Judge PARK. It's necessary in order to have a fair and just criminal system that there be zealous representation on both sides of the aisle. Not only does our Constitution require it, but the caselaw requires it. It requires that Federal public defenders be effective, and——

Senator WELCH. Right. And that's the 1938 Supreme Court case, *Johnson v. Zerbst*, then the 1963 Supreme Court case *Gideon v. Wainwright* held that—that the Constitution requires appointment of counsel. Can you tell me whether, in your experience, we're living up to meeting that constitutional requirement?

Judge PARK. The Federal Public Defender's Office that I worked at certainly did. There was time when I was there, the Federal public defender made sure to train the attorneys to be able to do our job and to do it zealously within the bounds of the law. And at that Office, when I was there, I also participated in training other attorneys to do just that.

Senator WELCH. That's great. And my understanding, according to statistics, that 9 out of 10 defendants in Federal court, U.S. district court, have appointed counsel.

Judge PARK. I would believe that that number may be accurate, yes.

Senator WELCH. Well, that's why I'm definitely hoping, as I've said before, that we maintain the budget—we don't cut it for the Federal Defenders. Thank you.

Judge PARK. Thank you.

Senator WELCH. Judge Kasubhai, you know, my colleagues on the Republican side are asking about some of your writing and what you mean, and whether it's clear or it isn't, whether it's prose or poetry.

But I have a lot of respect for the academic inquiry into issues, like, what is property? How does it affect relationships? That's a normal area of legal inquiry, is it not? Whether people agree or not with what a particular writer says?

Judge KASUBHAI. Senator Welch, I agree. In order for me to love the law and love our country, you know, looking at things in a critical way, just simply substantiates why our country and our democracy is as great as it is.

Senator WELCH. Right. But then, when you are in your role as an academic where it's open inquiry, which is different than your role as a judge, which is confined by the boundaries of the law—and I heard in one of your earlier answers, your description of the

process you go through, reading the briefs, testing them, and the hypothesis.

Can you just explain that and what you would be doing in your role as a judge as opposed to in your role as a, I would say, academic?

Judge KASUBHAI. It is a profound obligation and duty to uphold the rule of law, end-stopped.

And in the course of the work that I do under the oath that I've taken as a magistrate judge in the District of Oregon, is to rigorously evaluate the law. If it's a jury trial, ensure that the rules of evidence are applied so the record can be complete and without question, and then to apply those facts to the law as necessary.

Senator WELCH. Thank you. You know, the question of diversity came up and everyone of you answered that you're in favor of diversity. But I know among some of my colleagues, there's apprehension that diversity means special treatment. And I just want each of you to have an opportunity to say that—to indicate whether, if you have a defendant, diversity is going to determine or affect your decision about what the law says or requires. Any—yes.

Judge KASUBHAI. No.

Judge KAZEN. No, Senator.

Judge PARK. No, Senator.

Mr. SEMPER. No, Senator.

Senator WELCH. Okay.

Mr. SMITH. No, Senator.

Senator WELCH. All right. Thank you very much. And congratulations on your nominations. I yield back, Mr. Chairman.

Chair DURBIN. Thank you, Senator Welch. And I'll just make a couple observations. Judge Kasubhai, 16 years on the bench, is that right?

Judge KASUBHAI. Sixteen years on the bench and 4 additional years as a neutral appellate adjudicator.

Chair DURBIN. Did you ever write an opinion during that period of time?

Judge KASUBHAI. On the bench, no. As a neutral adjudicator on the Workers' Compensation Board, I was involved in panel decision-making and opinions that have been issued.

Chair DURBIN. When it came down to the cases that you considered as a State judge and a Federal magistrate, there is a written record.

Judge KASUBHAI. Yes, and you're right. State court, and as a magistrate judge, my written opinions, well over 400 of them, are clear for the record.

Chair DURBIN. And isn't it interesting today that when we considered your life's work and whether you're prepared for the Federal bench, the only reference made was to a case, *Boudjerada*——

Judge KASUBHAI. *Boudjerada*.

Chair DURBIN [continuing]. Which you, I suppose, issued an opinion as a magistrate, which was accepted by the district court?

Judge KASUBHAI. Correct.

Chair DURBIN. So the only opinion, out of the hundreds that you have written, that higher courts said you were right on, your view of the law, the First Amendment and such, was appropriate—but they've gone back.

If I could give counsel to any law school class, I'd say to them, "If you ever aspire to be a Federal judge, hold some of those wild thoughts in your mind and don't sit—don't write them down so that some Senator 30 years from now can read them back to you."

Judge KASUBHAI. Especially poetry.

[Laughter.]

Chair DURBIN. Yes. Well, your poetry has been fed back to you today.

[Laughter.]

Chair DURBIN. And I'll just say that they didn't spend much time, in fact, literally no time, on written opinions involving the law and the facts, and went after your poetry. So don't be discouraged. Poetry's still very important.

Well, it turns out that we have questions for the record—will be due to the nominees by 5 p.m. on Wednesday, October 11th.

The record will likewise remain open to that time to submit letters and similar materials.

The hearing is going to stand adjourned with gratitude to the nominees, their families, and friends.

[Whereupon, at 12:08 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Mustafa Taher Kasubhai

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

   United States District Judge for the District of Oregon

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

   Office: United States District Court for the District of Oregon
   5400 Wayne Morse United States Courthouse
   405 East Eighth Avenue
   Eugene, Oregon 97401

   Residence: Junction City, Oregon

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

   1970; Reseda, California

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

   1993 – 1996, University of Oregon School of Law; J.D., 1996

   1988 – 1992, University of California, Berkeley; B.S., 1992

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

   2018 – present

United States District Court for the District of Oregon
405 East 8th Avenue
Eugene, Oregon 97401
United States Magistrate Judge

2021 – present
University of Oregon School of Law
1221 University of Oregon
Eugene, Oregon 97403
Lecturer (Litigation Lab)

2007 – 2018
Oregon Judicial Department
125 East 8th Avenue
Eugene, Oregon 97401
State Circuit Court Judge

2003 – 2007
Oregon Workers' Compensation Board
2601 25th Street Southeast
Salem, Oregon 97302
Workers' Compensation Board Member

2000 – 2003
Law Offices of Mustafa T. Kasubhai, PC
Concurrent locations:
132 East Broadway
Eugene, Oregon 97401
409 Pine Street
Klamath Falls, Oregon 97601
Sole Shareholder

1998 – 2000
Law Offices of Kasubhai & Sanchez
132 East Broadway
Eugene, Oregon 97401
Partner

1997 – 1998
Law Offices of Rasmussen, Tyler & Mundorff
1600 Executive Parkway, Suite 110
Eugene, Oregon 97401
Associate

1997 – 1998
Lane County Legal Aid
101 East Broadway
Eugene, Oregon 97401

Landlord-Tenant Mediation Coordinator
(This was a grant-funded contract with Legal Aid.)

1997
Law Offices of Mustafa T. Kasubhai, PC
1600 Executive Parkway, Suite 110
Eugene, Oregon 97401
Sole Shareholder

1996 – 1997
University of Oregon School of Law Library
1221 University of Oregon
Eugene, Oregon 97403
Reference Librarian

1995 – 1996
University of Oregon
Office of Student Life
5216 University of Oregon
Eugene, Oregon 97403
Graduate Teaching Fellow

1995
University of Oregon
Multicultural Center
5216 University of Oregon
Eugene, Oregon 97403
Graduate Teaching Fellow

1994
University of Oregon School of Law
1221 University of Oregon
Eugene, Oregon 97403
Research Assistant to Professor Keith Aoki

Summer 1993
Episcopal Camp and Conference Center
253 Bushy Hill Road
Ivoryton, Connecticut 06442
Counselor

1992 – 1993
Nature's Classroom
253 Bushy Hill Road
Ivoryton, Connecticut 06442
Instructor

Other Affiliations:

2022 – present
Oregon Muslim Bar Association
11825 Southwest Greenburg Road, Suite 205
Tigard, Oregon 97223
President (2022 – present)

2020 – present
South Asian Bar Association of Oregon
902 Southwest Troy Street
Portland, Oregon 97209
Secretary (2020 – present)

2020 – present
Oregon Mediator Diversity Project
aka Oregon Mediation Diversity Project or Oregon Mediation Diversification Project
No physical address
Secretary (2023 – present)

2017 – 2019
Eugene Waldorf School
1350 McLean Boulevard
Eugene, Oregon 97405
Chair, Board of Trustees

2016 – 2022
Eugene Waldorf High School
aka Independent High School of the Willamette Valley
P.O. Box 50443
Eugene, Oregon 97405
Chair, Board of Directors (2018 – 2019)
Secretary, Board of Directors (2016 – 2018, 2020 – 2022)

2012 – present
Oregon Asian Pacific American Bar Association
P.O. Box 1728
Portland, Oregon 97207
Member, Board of Directors (2012 – 2016)

2009 – 2015
Lane County Bar Association
P.O. Box 11379
Eugene, Oregon 97440
President, Board of Directors (2014 – 2015)

President-Elect, Board of Directors (2013 – 2014)
Secretary/Treasurer, Board of Directors (2012 – 2013)
Member, Board of Directors (2009 – 2013)

2007 – 2013
Oregon State Board of Bar Examiners
16037 Southwest Upper Boones Ferry Road
Tigard, Oregon 97224
Chair, Board of Bar Examiners (2011 – 2013)
Board Member (2007-2011)

2002 – 2009
University of Oregon School of Law Alumni Association
1720 East 13th Avenue
Eugene, Oregon 97403
President, Board of Directors (2006 – 2009)
Secretary, Board of Directors (2006)
Vice President/Treasurer, Board of Directors (2005)
Member, Board of Directors (2002 – 2004)

1997
Eugene Human Rights Commission
101 West 10th Avenue, 2nd Floor
Eugene, Oregon 97401
Commissioner

1996 – 1998
McKenzie River Gathering Foundation (now Seeding Justice)
P.O. Box 12489
Portland, Oregon 97212
Member, Board of Directors

1996 – 1997 (approximately)
Sexual Assault Support Services
1902 Jefferson Street, Suite 1
Eugene, Oregon 97405
Member, Board of Directors

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

   I did not serve in the military. I 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.

Wallace P. Carson, Jr., Award for Judicial Excellence, Oregon State Bar (2022)

Recognition as one of the "100 Ducks Who Made a Difference" (1919-2019), Oregon Quarterly, University of Oregon (2019)

Recognition for Appointment to the U.S. District Court as a Magistrate Judge, Oregon State Bar Diversity Section (2019)

Justice Lynn Nakamoto Trailblazer Award, Oregon Asian Pacific American Bar Association (2018)

Daniel K. Inouye Trailblazer Award, National Asian Pacific American Bar Association (2018)

University of Oregon School of Law
Oregon Law Review, Associate Editor (1995 – 1996)
Student Bar Association, President (1995 – 1996)
The Weekly Dissent, Editor (1995)
Minority Law Students Association, Co-director (1994 – 1995)

University of Oregon Graduate School and Office of Student Affairs
Graduate Service Award (1995)

University of California, Berkeley
Beta Gamma Sigma Honor Society, Haas School of Business Administration, (1992)

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.

Committee on Bias in the Justice System in Oregon (2019 – present)
(formerly known as the Ad Hoc Committee on Unconscious Bias in the Justice System in Oregon)

Lane County Bar Association (2009 – 2015)
President, Board of Directors (2014 – 2015)
President-Elect, Board of Directors (2013 – 2014)
Secretary/Treasurer, Board of Directors (2012 – 2013)
Member, Board of Directors (2009 – 2012)
Judicial Administration Committee, Chair (2009 – 2011)
Mentorship Program, Mentor (approximately 2006 – 2012)

Lane County Circuit Court
- Security Advisory Committee (2016 – 2018)
- Externship Program, Coordinator (2010 – 2015)

The Lawyers' Campaign for Equal Justice
- Member, Advisory Board (2023 – present)

Local Federal Bar Association CLE Joint Bar Association Planning Committee
- Member (2017 – 2019)

Ninth Circuit Civics Contest Selection Committee, Member (2019 – 2020)

Oregon Arab Iranian Bar Association

Oregon Asian Pacific American Bar Association (2012 – present)
- Member, Board of Directors (2012 – 2016)
- Mentorship Program, Mentor (approximately 2007 – 2017)

Oregon Gay and Lesbian Lawyers Association

Oregon Hispanic Bar Association

Oregon Law Commission (2007 – 2008)

Oregon Mediator Diversity Project (formerly called Oregon Mediation Diversity Project and Oregon Mediation Diversification Project) (2020 – present)
- Secretary, Board of Directors (2023 – present)

Oregon Minority Lawyers Association
- Mentorship Program, Mentor (approximately 2007 – 2013)

Oregon Muslim Bar Association, President (2022 – present)

Oregon State Bar
- Committee on Practices and Procedures, Executive Committee (2006 – 2009)
  - Chair (2009)
  - Secretary (2008)
  - Member (2006 – 2007)
- Leadership College, Fellow (2006)
- Leadership Institute Advisory Committee (2020 – present)
- Opportunities for Law in Oregon, Presenter and Participant (2008 – present)
- Oregon Bench and Bar Commission on Professionalism (2018)
- Workers' Compensation Section (2007)
  - Executive Committee Member (2007)

Oregon State Board of Bar Examiners (2007 – 2013)

Chair, Board of Bar Examiners (2011 – 2013)
Member, Board of Bar Examiners (2007 – 2011)

Oregon Trial Lawyers Association (1997 – 2003)

Oregon Women Lawyers (2007 – 2018)

Regional Dialogue (an international NGO working on judicial reforms in Uzbekistan)
Member, Advisory Council (2023 – present)

Roland K. Rodman Inn of Court (1998 – 2000)

South Asian Bar Association of Oregon (2020 – present)
Secretary, Board of Directors (2020 – present)

United States District Court for the District of Oregon
Attorney Admission Fund, Chair (2022 – present)
Judicial Equity Committee (2019 – present)

10. **Bar and Court Admission**:

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

Oregon, 1997

There have been no lapses in membership, but I have been on inactive status since 2019. When I served on the Oregon State Circuit Court, I was required to remain on active status. The United States District Court, however, does not require that I remain on active status. Following my appointment to the U.S. District Court in 2018, I changed my status to inactive. I continue to be a member of the Oregon State Bar and pay annual bar dues at the inactive member rate. Upon application to the Oregon State Bar, I would be able to return to active status.

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

United States District Court for the District of Oregon, 1998

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.

City of Eugene Teen Court (now called Resolve Youth Restorative Justice)
Volunteer Judge, (Approximately 1999 – 2000)

Eugene Citizen Police Academy, Participant (2010)

Eugene Human Rights Commission, Commissioner (1997)

Eugene Waldorf School
Chair, Board of Trustees (2017 – 2019)
Member, Community Inclusion Committee (2018 – 2019, 2020 – 2022)
Member, Site Committee (2017 – 2019)

Eugene Waldorf High School Initiative
aka Independent High School of the Willamette Valley Initiative
Chair, Board of Directors (2018 – 2019)
Secretary, Board of Directors (2016 – 2018, 2020 – 2022)

Lane County Citizens Corrections Academy, Participant (2010)

Lane County Legal Aid, Senior Law Services, Volunteer (1997)

McKenzie Martial Arts
Participant (2010 – present)
Volunteer Instructor (2020 – present)

McKenzie River Gathering Foundation, Board Member (1996 – 1998)

Mosaic (Muslim Federal Employee Association) (2021 – present)

Sexual Assault Support Services, Board Member (Approximately 1996 – 1997)

University of Oregon
UO School of Law Alumni Association (2002 – 2009)
President, Board of Directors (2006 – 2009)
Secretary, Board of Directors (2006)
Vice President/Treasurer, Board of Directors (2005)
Member, Board of Directors (2002 – 2004)
UO School of Law, Dean's Advisory Council
Member (2006 – 2008, 2021 – present)

Unwanted Sexual Behavior Task Force, Member (1995 – 1996)

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

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

I have searched my records, electronic databases, and the internet in an effort to identify all materials responsive to this question, but there may be other materials I have not been able to recall or identify.

Pronouns and the Courts, U.S. District Court, District of Oregon Webpage of Magistrate Judge Mustafa T. Kasubhai (Oct. 13, 2022). Copy supplied.

Pronouns and Privilege, ADVANCE SHEET (Summer 2021). Copy supplied.

Unconscious Bias in the Courtroom, ADVANCE SHEET (Spring 2021). Copy supplied.

With Sarah Malik, *Is There a Place for Us? On Being a Muslim American in Oregon's Legal Community*, OREGON STATE BAR BULLETIN (Feb./Mar. 2021). Copy supplied.

Judge's Corner: Essay Adapted from Campaign for Equal Justice Keynote, BAR NEWS, Lane County Bar Association (Nov. 1, 2019). Copy supplied.

Judicial Independence, FOR THE DISTRICT OF OREGON (Fall 2019). Copy supplied.

Chasing the Rainbow, MULTNOMAH LAWYER (May 2018). Copy supplied.

Handling the Half-se Hearing, OSB CIVIL LITIGATION NEWSLETTER (May 2015). Copy supplied.

Letters to the Editor, BAR NEWS, Lane County Bar Association (Mar. 1, 2012). Copy supplied.

View from the Bench: Following Your Ideal Path to the Bench, TRIAL LAWYER (Fall 2008). Copy supplied.

Chapter 21: Torts and Products Liability, in 2007 OREGON LEGISLATION HIGHLIGHTS, Oregon State Bar (2007). I am unable to locate a copy.

Compensatory Damages (Supplement), in DAMAGES, Oregon State Bar (2002). I am unable to locate a copy.

With Karsten H. Rasmussen, *Compensatory Damages*, in DAMAGES, Oregon State Bar (1998). Copy supplied.

Destabilizing Power in Rape: Why Consent Theory in Rape Law is Turned on its Head, 11 WIS. WOMEN'S L.J. 37 (1996). Copy supplied.

During law school I was a contributing writer (Fall 1994) and editor (Winter – Spring 1995) for The Weekly Dissent, a weekly newsletter prepared by students at the University of Oregon School of Law. I do not have and have not been able to locate complete records. Based on the writings I have been able to locate, I include copies of the articles I wrote.

From the Editor, THE WEEKLY DISSENT (Apr. 24, 1995). Copy supplied.

From the Editor, THE WEEKLY DISSENT (Apr. 1995, specific date unknown). Copy supplied.

From the Editor, THE WEEKLY DISSENT (Mar. 27, 1995). Copy supplied.

From the Editor, THE WEEKLY DISSENT (Mar. 13, 1995). Copy supplied.

From the Editor, THE WEEKLY DISSENT (Mar. 6, 1995). Copy supplied.

From the Editor, THE WEEKLY DISSENT (Feb. 20, 1995). Copy supplied.

From the Editor, THE WEEKLY DISSENT (Feb. 13, 1995). Copy supplied.

From the Editor, THE WEEKLY DISSENT (Feb. 6, 1995). Copy supplied.

From the Editor, THE WEEKLY DISSENT (Jan. 30, 1995). Copy supplied.

Anita Hill Speaks in Oregon: Lecture Focuses on Sexual Harassment and Domestic Violence, THE WEEKLY DISSENT (Nov. 7, 1994). Copy supplied.

With Kirk Bailey, *Perceptions of Favoritism Affect Law School Community*, THE WEEKLY DISSENT (Oct. 24, 1994). Copy supplied.

OCA, Measure 13, and Anti-Gay Violence, THE WEEKLY DISSENT (Oct. 10, 1994). Copy supplied.

Sensualized Property Theory, THE WEEKLY DISSENT (Oct. 3, 1994). Copy supplied.

Woman Affirming, THE WEEKLY DISSENT (Sept. 26, 1994). Copy supplied.

The Mythology of Law Review, THE WEEKLY DISSENT (Sept. 19, 1994). Copy supplied.

"What You Mean, 'No'?," THE WEEKLY DISSENT (Sept. 12, 1994). Copy supplied.

"Master Narrative" Limits Scope of Legal Education, THE WEEKLY DISSENT (Sept. 6, 1996). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have searched my records, electronic databases, and the internet in an effort to identify all materials responsive to this question, but there may be other materials I have not been able to recall or identify.

The Lawyers' Campaign for Equal Justice, Justice Protects: 2022 – 2023 Annual Report (2023). As a member of the Advisory Committee for the Lawyers' Campaign for Equal Justice, my name appeared in this report. To the best of my recollection, however, I did not draft, edit, or participate in any way in the report's preparation, and I was not asked to vote on or approve its content. Copy supplied.

Oregon Muslim Bar Association, Statement Regarding the New Mexico Murders (Aug. 14, 2022). Copy supplied.

Oregon Muslim Bar Association, Statement Regarding the Dobbs Decision (June 27, 2022). As the statement language indicates, as a judicial officer I recused myself and did not endorse or otherwise participate in preparing this statement.

Oregon Muslim Bar Association, Announcement of OMBA (Apr. 2, 2022). Copy supplied. Video available at https://www.facebook.com/watch/?v=1686356131744827.

South Asian Bar Association of Oregon, Statement on the Death of George Floyd and Racial Injustice (June 4, 2020). As the statement language indicates, as a judicial officer I recused myself and did not endorse or otherwise participate in preparing this statement. Copy supplied.

South Asian Bar Association of Oregon, COVID-19 Statement (Mar. 23, 2020). I did not endorse or otherwise participate in preparing this statement. Copy supplied.

Eugene Waldorf School, Statement of Equity, Diversity, and Inclusion (May 2019). Copy supplied.

Eugene Waldorf High School Initiative aka Independent High School of the Willamette Valley, Statement of Equity, Diversity, and Inclusion (Oct. 15, 2018). Copy supplied.

Oregon State Bar, "Bench and Bar Commission on Professionalism," in *2018 Committee Annual Reports* (2018). As a member of the Bench and Bar Commission on Professionalism of the Oregon State Bar, my name appeared in this report. To the best of my recollection, however, I did not draft, edit, or participate in any way in the report's preparation, and I was not asked to vote on or approve its content. Copy supplied.

Lane County Bar Association, *Bar News* (Mar. 1, 2012). The Lane County Bar Association had a standard practice of including a list of the names of the members of the Lane County Bar Association Board of Directors in its monthly newsletter. As a member of the Board of Directors, my name appeared in these newsletters. This issue includes one announcement I contributed. Aside from that announcement, I did not draft, edit, or participate in any way in the issue's preparation or the preparation of any of the other newsletters, and I was not asked to vote on or approve the content. I am unable to locate other issues of the Lane County Bar Association *Bar News* from the time period I served on the Board of Directors. Copy supplied.

City of Eugene Human Rights Commission, Human Rights Retrospective Project: A Historical Look Back over the Past 20 Years from 1990 to 2011 (Nov. 2011). I am listed in this publication as a former member of the City of Eugene Human Rights Commission. To the best of my recollection, I did not draft, edit, or participate in any way in the publication's preparation, and I was not asked to vote on or approve its content. Copy supplied.

State of Oregon Public Defense Services Commission, Lane County Service Delivery Review (Sept. 9, 2009). Some judicial colleagues and I met with the Executive Director of Oregon Public Defense Services to provide feedback on the provision of public defense services in Lane County. To the best of my recollection, I did not draft, edit, or participate in any way in the preparation of the report itself. Copy supplied.

Oregon State Bar, 2009 Legislative Tips Handbook (Jan. 8, 2009). As Chair of the Procedure and Practice Committee of the Oregon State Bar, I am listed in this handbook as a legislative contact, but, to the best of my recollection, I did not draft, edit, or participate in any way in the handbook's creation. Copy supplied.

The Oregon Law Commission had a standard practice of including a list of the names of commissioners in its Biennial Report. As a member of the Oregon Law Commission, my name appeared in these Biennial Reports. To the best of my recollection, however, I did not draft, edit, or participate in any way in the reports' preparation, and I was not asked to vote on or approve their content.

> Oregon Law Commission, Biennial Report of the Oregon Law Commission 2007-2009 (2009). Copy supplied.
>
> Oregon Law Commission, Biennial Report of the Oregon Law Commission 2005-2007 (2007). Copy supplied.

The Procedure and Practice Committee of the Oregon State Bar had a standard practice of including a list of the names of committee members in its Annual Report. As a member of the Committee, my name appeared in these Annual Reports. To the best of my recollection, however, I did not draft, edit, or participate in any way in the reports' preparation, and I was not asked to vote on or approve their content.

> Oregon State Bar, "Procedure & Practice Committee" in *2008 Committee and Section Annual Reports* (2008). Copy supplied.
>
> Oregon State Bar, "Procedure & Practice Committee" in *2007 Committee and Section Annual Reports* (2007). Copy supplied.
>
> Oregon State Bar, "Procedure & Practice Committee" in *2006 Committee and Section Annual Reports* (2006). Copy supplied.

The University of Oregon Law School had a standard practice of including a list of the names of members of the Dean's Advisory Committee in its Oregon Lawyer magazine. As a member of the Dean's Advisory Committee, my name appeared in these publications. To the best of my recollection, however, I did not draft, edit, or participate in any way in the publications' preparation, and I was not

asked to vote on or approve their content.

University of Oregon Law School, Oregon Lawyer 2008 Annual (2008). Copy supplied.

University of Oregon Law School, Oregon Lawyer Update 2007 (2007). Copy supplied.

University of Oregon Law School, Oregon Lawyer (2006). Copy supplied.

The University of Oregon Law School had a standard practice of including a list of the names of members of the Board of Directors of the Law School Alumni Association in its Oregon Lawyer magazine. As a member of the Law School Alumni Association Board of Directors, my name appeared in these publications. To the best of my recollection, however, I did not draft, edit, or participate in any way in the publications' preparation, and I was not asked to vote on or approve their content.

University of Oregon Law School, Oregon Lawyer 2008 Annual (2008). This publication is the same as that provided in connection with the entry for the University of Oregon Law School Dean's Advisory Committee (2008) listed above.

University of Oregon Law School, Oregon Lawyer Update 2007 (2007). This publication is the same as that provided in connection with the entry for the University of Oregon Law School Dean's Advisory Committee (2007) listed above.

University of Oregon Law School, Oregon Lawyer (2006). This publication is the same as that provided in connection with the entry for the University of Oregon Law School Dean's Advisory Committee (2006) listed above.

University of Oregon Law School, Oregon Lawyer Update (Winter/Spring 2006). Copy supplied.

University of Oregon Law School, Oregon Lawyer Update (Spring/Summer 2005). Copy supplied.

University of Oregon Law School, Oregon Lawyer (2005). Copy supplied.

University of Oregon Law School, Oregon Lawyer (2004). Copy supplied.

University of Oregon Law School, Oregon Lawyer Update (Spring 2004). Copy supplied.

University of Oregon Law School, Oregon Lawyer Update (Winter 2004). Copy supplied.

University of Oregon Law School, Oregon Lawyer (2003). Copy supplied.

University of Oregon Law School, Oregon Lawyer Update (Winter 2003). Copy supplied.

University of Oregon Law School, Oregon Lawyer (2002). Copy supplied.

Oregon State Bar, "Workers Compensation Section" in *2007 Committee and Section Annual Reports* (2007). The Workers' Compensation Section of the Oregon State Bar had a standard practice of including a list of the names of Section members in its Annual Report. As a member of the Section, my name appeared in this report. To the best of my recollection, however, I did not draft, edit, or participate in any way in the report's preparation, and I was not asked to vote on or approve its content. This publication is the same as that provided in connection with the entry for the Procedure and Practice Committee of the Oregon State Bar (2007) listed above.

McKenzie River Gathering Foundation, 1997 – 1998 Annual Report (1998). The McKenzie River Gathering Foundation had a standard practice of including a list of the names of board members in its Annual Report. As a member of the board, my name appeared in this Annual Report. To the best of my recollection, however, I did not draft, edit, or participate in any way in the report's preparation, and I was not asked to vote on or approve its content. Copy supplied.

Statement Against Discrimination on the Basis of Sexual Orientation, signed by members of the University of Oregon community (Oct. 11, 1996). Copy supplied.

Student Body Statement, signed by members of University of Oregon Law School student organizations (Feb. 13, 1995). This statement expressed concern about hateful acts against many individuals and organizations at the school and called on students to create a safe and welcoming atmosphere for all. Copy supplied.

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

I have searched my records, electronic databases, and the internet in an effort to identify all materials responsive to this question, but there may be other materials I have not been able to recall or identify.

Minutes of the Oregon State Bar Board of Governors Meeting (Nov. 19, 2022). I spoke about the Oregon New Lawyers' Division gender inclusivity proposal and

the importance of inclusivity within the legal profession. I had provided feedback to the ONLD on a draft of the proposal, but I was not otherwise involved in the proposal's drafting or approval. Copy supplied.

Letter to Governor Kate Brown Re Petition of Commutation for Edward Granger (Sept. 24, 2021). Copy supplied.

Letter from the Oregon State Bar Procedure and Practice Committee, which I signed as Chair, to the Oregon State Bar Council on Court Procedures (2009, specific date unknown). The letter asked the Council to recommend state court rule changes to the legislature regarding electronically stored information. I am unable to locate a copy.

Letter from all Lane County judges to the Lane County Commission requesting an increase in jail operations (December 10, 2008). The letter described the impact of the jail's reduced operating capacity on the administration of criminal justice and requested that the Commission fund increased operational capacity at the jail. I am unable to locate a copy.

During the time I was affiliated with the Workers' Compensation Section of the Oregon State Bar, my name appeared in the following meeting minutes:

> Minutes of the Workers' Compensation Section Executive Committee Meeting (Nov. 14, 2008). Copy supplied.
>
> Minutes of the Workers' Compensation Section Executive Committee Meeting (June 20, 2008). Copy supplied.
>
> Minutes of the Workers' Compensation Section Executive Committee Meeting (May 16, 2008). Copy supplied.
>
> Minutes of the Workers' Compensation Section Executive Committee Meeting (Apr. 18, 2008). Copy supplied.
>
> Minutes of the Workers' Compensation Section Executive Committee Meeting (Mar. 21, 2008). Copy supplied.
>
> Minutes of the Workers' Compensation Section Executive Committee Meeting (Feb. 15, 2008). Copy supplied.
>
> Minutes of the Workers' Compensation Section Executive Committee Meeting (Jan. 18, 2008). Copy supplied.
>
> Minutes of the Workers' Compensation Section Executive Committee Meeting (Dec. 21, 2007). Copy supplied.

Minutes of the Workers' Compensation Section Executive Committee Meeting (Oct. 19, 2007). Copy supplied.

Minutes of the Workers' Compensation Section Executive Committee Meeting (Aug. 17, 2007). Copy supplied.

Minutes of the Workers' Compensation Section Executive Committee Meeting (Jul. 20, 2007). Copy supplied.

Minutes of the Workers' Compensation Section Executive Committee Meeting (Apr. 20, 2007). Copy supplied.

Minutes of the Workers' Compensation Section Executive Committee Meeting (Mar. 16, 2007). Copy supplied.

Minutes of the Workers' Compensation Section Executive Committee Meeting (Feb. 16, 2007). Copy supplied.

Minutes of the Workers' Compensation Section Executive Committee Meeting (Jan. 26, 2007). Copy supplied.

Minutes of the Workers' Compensation Section Executive Committee Meeting (May 19, 2006). Copy supplied.

Minutes of the Workers' Compensation Section Executive Committee Meeting (Jan. 20, 2006). Copy supplied.

As a member of the Oregon State Bar Procedure and Practice Committee, I submitted written testimony and testified in person on behalf of the Committee before the Oregon Senate Judiciary Committee of the Oregon State Legislature regarding three bills the Procedure and Practice Committee drafted (May and March 2007).

Written and in-person testimony on HB 2366, which related to the statute of limitations for parent and guardian claims for reimbursement of medical costs for injured minors, Oregon Senate Judiciary Committee, Salem, Oregon (May 10, 2007). Written testimony supplied.

Written and in-person testimony on HB 2367, which related to quorum requirements for the Council on Court Procedure, Oregon Senate Judiciary Committee, Salem, Oregon (Mar. 5, 2007). Written testimony supplied.

Written and in-person testimony on HB 2368, which related to trial court jurisdiction over certain motions, Oregon Senate Judiciary Committee, Salem, Oregon (Mar. 5, 2007). Written testimony supplied.

Testimony at a University of Oregon hearing on proposed Student Conduct Code changes, which related to adding the lack of consent as an element of sexual assault (Nov. 1, 1996). I spoke about the language of the proposal that I helped draft as an employee of the Office of Student Life and member of the Unwanted Sexual Behavior Task Force. I have no transcript or recording.

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

I have searched my records, electronic databases, and the internet in an effort to identify all events responsive to this question, but there may be other events I have not been able to recall or identify.

June 13, 2023: Speaker, Eighth Grade Graduation Ceremony, Eugene Waldorf School, Eugene, Oregon. Notes supplied.

May 25, 2023: Panelist, Road to the Bench, Oregon Women Lawyers (virtual). I spoke about my experience with the judicial selection process for the U.S. Magistrate Judge position. I have no notes, transcript, or recording. The address of Oregon Women Lawyers is P.O. Box 40393, Portland, Oregon 97240.

May 25, 2023: Panelist, Celebrating the Culture and Diversity in the Asian American, Native Hawaiian, Pacific Islander Communities, Oregon Judicial Department (virtual). I spoke about cultural experiences as a South Asian attorney and judge. I have no notes, transcript, or recording. The address of the Oregon Judicial Department is Office of the State Court Administrator, Supreme Court Building, 1163 State Street, Salem, Oregon 97301.

May 19, 2023: Speaker, Pronouns and Gender Inclusivity, In-house training, Oregon State Bar, Tigard, Oregon. Video supplied.

May 12, 2023: Emcee, Leadership Institute Graduation Ceremony, Oregon State Bar, Portland, Oregon. I introduced each of the speakers for the event. I have no notes, transcript, or recording. The address of the Oregon State Bar is 16037 Southwest Upper Boones Ferry Road, Tigard, Oregon 97224.

May 12, 2023: Speaker, Pronouns in the Courts, In-house training, Maryland Office of Administrative Hearings (virtual). I used the same notes that were provided for the April 4, 2022, National Workshop for Magistrate Judges.

April 28, 2023: Speaker, Equity and its Role in Professionalism, Oregon State Bar Workers' Compensation Conference, Gleneden Beach, Oregon. I used the same notes that were provided for the April 4, 2022, National Workshop for Magistrate Judges.

April 18, 2023: Speaker, Judicial Independence and Democracy, Referendum 2023—Uzbekistan's Constitution, Regional Dialogue, Tashkent, Uzbekistan. Notes supplied.

April 13, 2023: Speaker, Ethics in Professionalism Class, Professor Tom Lininger, University of Oregon School of Law, Eugene, Oregon. I used the same notes that were provided for the presentation on ethics for the University of Oregon School of Law on March 17, 2021.

April 8, 2023: Speaker, 2nd Annual Ramadan Iftar, Oregon Muslim Bar Association, Portland, Oregon. I made welcoming remarks and introductions. I have no notes, transcript, or recording. The address of the Muslim Bar Association is 11825 Southwest Greenburg Road, Suite 205, Tigard, Oregon 97223.

April 3, 2023: Panelist, Roadways to the Bench: Who Me? A Bankruptcy or Magistrate Judge?, Administrative Office of the United States Courts, Washington, DC. I participated in a panel question-and-answer session and shared my experiences on my path to the bench. After the panel presentation, I joined roundtable discussions on the same topic with attendees. I have no notes, transcript, or recording. The address for the Administrative Office of the United States Courts is One Columbus Circle, Northeast, Washington, DC 20544.

March 10, 2023: Emcee, Social and Networking Event, Oregon Arab Iranian Bar Association, South Asian Bar Association of Oregon, Oregon Muslim Bar Association, Portland, Oregon. I welcomed the attendees and introduced the officers of the organizations. I have no notes, transcript, or recording. The address of the Oregon Muslim Bar Association is 11825 Southwest Greenburg Road, Suite 205, Tigard, Oregon 97223.

January 10, 2023: Speaker, Pronouns in the Courts, In-house Training, Bankruptcy Court for the District of Oregon, Portland, Oregon. I used the same notes that were provided for the April 4, 2022, National Workshop for Magistrate Judges.

December 1, 2022: Panelist, Gender Equity in the Judiciary 2022, Judicial Conference, Regional Dialogue, Tashkent, Uzbekistan. I served on a panel with two other judges and engaged in an interactive dialogue with judges in Uzbekistan on the value of increasing gender representation on the bench. I have no notes,

transcript, or recording. The address of Regional Dialogue is Kalce 5j, 1370 Logatec, Slovenia.

November 30, 2022: Panelist, Gender Equity in the Judiciary 2022, Judicial Conference, Regional Dialogue, Tashkent, Uzbekistan. I served on a panel with two other judges and engaged in an interactive dialogue with judges in Uzbekistan on the value of increasing gender representation on the bench. I have no notes, transcript, or recording. The address of Regional Dialogue is Kalce 5j, 1370 Logatec, Slovenia.

November 18, 2022: Host, Meeting with University of Oregon Law School Muslim Student Association, U.S. District Court for the District of Oregon, Eugene Division, Eugene, Oregon. I led a tour of the courthouse, spoke about externships and clerkships, and fielded questions. I have no notes, transcript, or recording. The address of the U.S. District Court for the District of Oregon, Eugene Division, is 405 East 8th Avenue, Eugene, Oregon 97401.

November 12, 2022: Panelist, Muslims in the Judiciary: Challenges and Perspectives, National Association of Muslim Lawyers Annual Conference (virtual). I shared stories of my path to the bench and fielded questions from the moderator and the audience. I have no notes, transcript, or recording. The address of the National Association of Muslim Lawyers is 2670 Miriam Lane, Decatur, Georgia 30032.

October 18, 2022: Panelist, Gender Identity and Access to the Courts, Annual Oregon Judicial Conference, Oregon Judicial Department, Gleneden Beach, Oregon. I used the same notes that were provided for the April 4, 2022, National Workshop for Magistrate Judges.

October 13, 2022: Speaker, Use of Pronouns and Honorifics in Court and Legal Practice, Lane County Bar Association, Eugene, Oregon. I used the same notes that were provided for the April 4, 2022, National Workshop for Magistrate Judges.

October 7, 2022: Speaker, Investiture of Judge Chanpone Sinlapasai, Multnomah County State Circuit Court, Portland, Oregon. Video supplied.

September 30, 2022: Moderator, What Happened and What's Next? Recent and Upcoming Supreme Court Cases, O'Connell Conference, University of Oregon, Eugene, Oregon. Video available at https://www.youtube.com/watch?v=mUZAQhTi-O4&t=8s.

September 9, 2022: Speaker, Campaign for Equal Justice Kick-Off Gala, Campaign for Equal Justice, Portland, Oregon. Video available at https://www.youtube.com/watch?v=h194VBpox7M.

July 25, 2022: Panelist, Gender Diversity and Equal Justice, National Workshop for Magistrate Judges, Federal Judicial Center, Salt Lake City, Utah. I used the same notes that were provided for the April 4, 2022, National Workshop for Magistrate Judges.

June 3, 2022: Panelist, Language in the Courts, Berkeley Judicial Institute (virtual). Video available at https://www.youtube.com/watch?v=hMRCoZtRppw.

May 22, 2022: Coach, Mock Mediation Scenarios, Oregon Mediation Diversity Project, Portland, Oregon. I coached and provided feedback to participants following their mock mediation scenario. I have no notes, transcript, or recording. The Oregon Mediation Diversity Project has no physical address.

May 21, 2022: Speaker, Stages of Grieving as a Tool for Effective Mediation, Oregon Mediation Diversity Project Training, Oregon Mediation Diversity Project, Portland, Oregon. I used the same notes that were provided for the Oregon Mediation Association conference on November 14, 2020.

May 20, 2022: Speaker, Pronouns in the Court—Gender Identity Equity, Oregon New Lawyers Division, Oregon State Bar, Eugene, Oregon. I used the same notes that were provided for the National Workshop for Magistrate Judges in Nashville, Tennessee, April 4, 2022.

May 17, 2022: Interviewer, Bench to Bitcoin: Former U.S. Magistrate Judge Paul Grewal's Legal and Professional Journey, Brown Bag Lunch, South Asian Bar Association of Oregon (virtual). I asked questions of Judge Grewal about his path to the bench and his experience at Bitcoin. I have no notes, transcript, or recording. The address for the South Asian Bar Association of Oregon is 902 Southwest Troy Street, Portland, Oregon 97209.

May 13, 2022: Emcee, Leadership Institute Graduation Ceremony, Oregon State Bar, Portland, Oregon. I introduced each of the speakers for the event. I have no notes, transcript, or recording. The address of the Oregon State Bar is 16037 Southwest Upper Boones Ferry Road, Tigard, Oregon 97224.

April 23, 2022: Speaker, Presentation on Public Service, MOSAIC (Muslim Federal Employee Association) (virtual). Notes supplied.

April 22, 2022: Panelist, Pronouns and Privilege, King County (Washington) District Court Judicial Retreat, King County District Court (virtual). I used the same notes that were provided for the April 4, 2022, National Workshop for Magistrate Judges.

April 15, 2022: Speaker, Inaugural Party and Iftar, Oregon Muslim Bar Association, Portland, Oregon. I made some welcoming remarks and introductions. I have no notes, transcript, or recording. The address of the Oregon

Muslim Bar Association is 11825 Southwest Greenburg Road, Suite 205, Tigard, Oregon 97223.

April 4, 2022: Panelist, Gender Diversity and Equal Justice, National Workshop for Magistrate Judges, Federal Judicial Center, Nashville, Tennessee. Notes supplied.

March 26, 2022: Panelist, Experiences of a Judicial Intern & Clerkship, National Muslim Law Student Association (virtual). I spoke about opportunities for students and my experiences in the judicial system. I have no notes, transcript, or recording. The National Muslim Law Student Association has no physical address.

January 13, 2022: Panelist, Pathways to the Judiciary, Muslim Americans in Public Service (virtual). I spoke about my legal career and my pathway to becoming a judge. I have no notes, transcript, or recording. The address for Muslim Americans in Public Service is 1100 H Street, Northwest, Suite 840, Incorp Services Inc., Washington, DC 20005.

November 5, 2021: Speaker, Is There a Place for Us in Oregon?, Oregon State Bar Convocation on Equality, Oregon State Bar Diversity Section (virtual). Notes and press coverage supplied.

October 2, 2021: Speaker, Outreach conversation, Oregon Commission on Black Affairs (virtual). Minutes supplied.

September 25, 2021: Speaker, National Civic Leadership Forum, Asian Civic Leadership USA and Asian American Unity Coalition (virtual). Notes supplied.

September 21, 2021: Speaker, Best Practices in Federal Court, NALS (National Association of Legal Support Professionals) of Lane County (virtual). I spoke about best practices in federal court. I have no notes, transcript, or recording. The address for NALS of Lane County is 110 Harlow Road, Suite 300, Springfield, Oregon 97477.

September 17, 2021: Speaker, Outreach conversation, Oregon Commission for Women (virtual). Minutes supplied.

September 1, 2021: Speaker, Outreach conversation, Oregon Commission on Asian and Pacific Islander Affairs (virtual). Minutes supplied.

June 16, 2021: Presenter, *Local Practice in the U.S. District Court for the District of Oregon CLE*, Oregon State Bar (virtual). This was recorded in December 2020 and released as a CLE in June 2021, so the recording is the same as the one provided for the December 30, 2020, CLE for the Oregon State Bar.

June 12, 2021: Speaker, High School Graduation, Oregon Islamic Academy, Portland, Oregon. Notes supplied.

April 18, 2021: Panelist, Community and Court Conversations Part 2, NAACP Eugene Springfield Oregon Unit 1119 (virtual). Video available at https://www.facebook.com/watch/?v=3277206029047545.

April 7, 2021: Panelist, "Part 2: Is there a Place for Us in Oregon," South Asian Bar Association of Oregon (virtual). I continued a discussion in a question-and-answer roundtable about race and ethnicity within the legal profession in Oregon. I have no notes, transcript, or recording. The address for the South Asian Bar Association of Oregon is 902 Southwest Troy Street, Portland, Oregon 97209.

April 2, 2021, Speaker, Meeting with High School Students at Oregon Islamic Academy, Muslim Educational Trust (virtual). Video available at https://www.youtube.com/watch?v=ZyeJaqRi1jE.

April 1, 2021: Speaker, Is There a Place for Us?, "Public Square" series on American Muslims in the Public Square, Muslim Educational Trust of Portland (virtual). Video available at https://www.youtube.com/watch?v=NzF18MkVrxY&pp=ygUkbXVzbGltIGVkdWNhdGlvbiB0cnVzdCBwdWJsaWMgc3F1YXJl.

March 17, 2021: Speaker, Ethics and Professionalism, Law School Class, Professor Tom Lininger, University of Oregon School of Law (virtual). Notes supplied.

March 17, 2021: Panelist, Is There a Place for Us?, Frohnmayer Leadership Program, University of Oregon School of Law (virtual). I spoke about race and ethnicity and my experiences in the legal profession in Oregon. I have no notes, transcript, or recording. The address for the Frohnmayer Leadership Program is 1515 Agate Street, Eugene, OR 97403.

March 5, 2021: Panelist, Power Dynamics and Equity Issues in Mediation, Oregon Trial Lawyers Association (virtual). Notes supplied.

March 1, 2021: Speaker, Chai Chat with Judge Mustafa Kasubhai, South Asian Bar Association of North America (virtual). I spoke about my career path and experiences as an attorney and judge. I have no notes, transcript, or recording. The address for the South Asian Bar Association of North America is 4930 Balboa Boulevard, Unit 260468, Encino, California 91426.

February 17, 2021: Panelist, Unconscious Bias in the Courts, Oregon Women Lawyers, (virtual). Notes supplied.

January 26, 2021: Panelist, Pathways to Becoming a Judge, Muslim Bar Association of New York (virtual). Recording available at https://podcasters.spotify.com/pod/show/mubany/episodes/Pathways-to-Becoming-a-Federal-Magistrate-Judge-epjpth.

December 30, 2020: Speaker, Practicing Law in Oregon District Court, Oregon State Bar (virtual). Recording supplied. This recording was released as a CLE in June 2021.

December 14, 2020: Speaker, Gift to the City of Eugene, City Club of Eugene, (virtual). Video available at https://youtu.be/_AQ6VuG0h28?t=3519.

December 10, 2020: Speaker, Unconscious Bias, Lane County Bar Association (virtual). I used the same notes that were provided for the presentation for the Oregon State Bar on October 5, 2019.

November 14, 2020: Speaker, Stages of Grieving as a Tool for Effective Mediation, Oregon Mediation Association Conference, Oregon Mediation Association (virtual). Notes supplied.

November 10, 2020: Panelist, Is There a Place for Us in Oregon? South Asian Bar Association of Oregon (virtual). I participated in a facilitated conversation about the personal experiences of South Asian lawyers in Oregon. I have no notes, transcript, or recording. The address for the South Asian Bar Association is 902 Southwest Troy Street, Portland, Oregon 97209.

September 30, 2020: Speaker, Oregon Law Student Affinity Bar Series: Networking in a Pandemic, South Asian Bar Association of Oregon (virtual). I spoke to law students about best practices for job interviews and networking in a virtual environment. I have no notes, transcript, or recording. The address for the South Asian Bar Association is 902 Southwest Troy Street, Portland, Oregon 97209.

August 12, 2020: Speaker, Introduction of Don Corson, Distinguished Trial Lawyer Award 2020, Oregon Trial Lawyers Association (virtual). Notes supplied.

July 3, 2020. Panelist. Community and Court Conversations, NAACP Eugene Springfield Oregon Unit 1119 (virtual). Video available at https://www.facebook.com/watch/live/?ref=watch_permalink&v=496065691518004.

June 13, 2020: Speaker, Commencement, Conflict and Dispute Resolution Program, University of Oregon (virtual). Video available at https://youtu.be/AHMIIuuhkZ4?t=1199.

June 5, 2020: Panelist, Oregon Mediation Diversification Project Launch, Oregon Mediation Diversity Project, Oregon Women Lawyers (virtual). Video available at https://www.youtube.com/watch?v=vLWNt0VZM6Q and press coverage supplied.

May 2020 (specific date unknown): Speaker, Congratulations to Class of 2020, Video Collage, University of Oregon School of Law (virtual). Video available at https://www.youtube.com/watch?v=i7jVU7a9vF8.

February 7, 2020: Speaker, Reflections on Equity and Privilege, Oregon Blacks in Government Annual Dinner, Blacks in Government, Eugene, Oregon. Video supplied.

2020 (specific date unknown): Speaker, Oregon Implicit Bias Training Video, Committee on Bias in the Justice System in Oregon, Portland, Oregon. Video available at https://www.youtube.com/watch?v=BA-z4mS_Evg&t=5s and press coverage supplied.

December 5, 2019: Speaker, Investiture of Hon. Mustafa T. Kasubhai, United States District Court for the District of Oregon, Eugene, Oregon. Transcript and press coverage supplied.

November 15, 2019: Presiding Judge, Naturalization Ceremony Remarks, United States District Court for the District of Oregon, Eugene, Oregon. Transcript supplied.

October 5, 2019: Panelist, Implicit Bias in the Litigation Process: How to Get a Fair Trial in Discrimination Cases, Labor and Employment Law Section CLE and Annual Meeting, Oregon State Bar, Gleneden Beach, Oregon. Notes supplied.

October 4, 2019: Speaker, Lane County Bar Association Campaign for Equal Justice Luncheon, Campaign for Equal Justice, Eugene, Oregon. Remarks and press coverage supplied.

October 3, 2019: Speaker, SABA Launch Event, South Asian Bar Association of Oregon, Portland, Oregon. I welcomed the audience and shared SABA's vision for engagement in the legal community. I have no notes, transcript, or recording, but press coverage is supplied. The address of the South Asian Bar Association of Oregon is 902 Southwest Troy Street, Portland, Oregon 97209.

September 25, 2019: Speaker, Investiture of The Honorable Josephine Mooney, Oregon Court of Appeals, Salem, Oregon. Remarks supplied.

September 13, 2019: Speaker, "Choices," Remarks to the UO Law School incoming class, University of Oregon School of Law, Eugene, Oregon. Notes supplied.

May 16, 2019: Speaker, Judicial Independence, Federal Bar Association, Portland, Oregon. I used the same notes that were provided for the presentation for the Lane County Bar Association on April 11, 2019.

April 11, 2019: Speaker, The Importance of an Independent Judiciary, Lane County Bar Association Luncheon, Lane County Bar Association, Eugene, Oregon. Notes and press coverage supplied.

March 20, 2019: Presenter, Servant Leadership, Frohnmayer Leadership Class, University of Oregon School of Law, Eugene, Oregon. Presentation supplied.

February 8, 2019: Panelist, Road to the Bench, Judicial Recognition Ceremony and Road to the Bench: Judges Share Their Stories CLE, Oregon State Bar Diversity Section, Oregon Women Lawyers, and American Constitution Society (Lewis and Clark Chapter), Portland, Oregon. I spoke about my career and experience with the judicial selection process. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Oregon State Bar is 16037 Southwest Upper Boones Ferry Road, Tigard, Oregon 97224.

November 16, 2018: Presiding Judge, Naturalization Ceremony, United States District Court for the District of Oregon, Eugene, Oregon. Notes and press coverage supplied.

November 9, 2018: Award Recipient, Power of a Word, Daniel K. Inouye Trailblazer Award Ceremony, National Asian Pacific American Bar Association, Chicago, Illinois. Remarks supplied.

October 25, 2018: Panelist, Introducing the Magistrate Judges, Oregon Chapter of the Federal Bar Association, Portland, Oregon. Notes supplied.

October 2, 2018, Speaker, Introduction of Dean Marcilynn Burke, Campaign for Equal Justice Luncheon, Campaign for Equal Justice, Eugene, Oregon. Notes supplied.

August 31, 2018: Award Recipient, "Intersections," Justice Nakamoto Trailblazer Award Dinner and Gala, Oregon Asian Pacific American Bar Association, Portland, Oregon. Remarks supplied.

May 24, 2018: Moderator, Veterans in the Oregon Criminal Justice System, Lane County Bar Association and Federal Bar Association, Eugene, Oregon. I moderated a panel presentation about challenges veterans face in the criminal justice system, the Veteran's Treatment Court, and best practices for attorneys in assisting veterans in accessing legal services. I have no notes, transcript, or recording. The address for the Lane County Bar Association is P.O. Box 11379 Eugene, Oregon 97440.

January 25, 2018: Panelist, Keeping Yourself in the Game, Practical Skills Workshop for Law Students, Oregon Asian Pacific American Bar Association, Eugene, Oregon. I shared my professional experiences as a practicing lawyer and judge and best practices for resume development, interviewing, and presenting in court. I have no notes, transcript, or recording. The address for the Oregon Asian Pacific American Bar Association is P.O. Box 1728, Portland, Oregon 97207.

November 15, 2017: Panelist, Update on High School Initiative, Independent High School of the Willamette Valley (aka Eugene Waldorf High School Initiative), Eugene, Oregon. I spoke about the progress of the Initiative and next steps. I have no notes, transcript, or recording. The address of the Independent High School of the Willamette Valley is P.O. Box 50443 Eugene, Oregon 97405.

October 12, 2017: Speaker, Courtroom Conduct: What You Can Do Versus What You Should Do, Fundamentals of Oregon Civil Trial Procedure, Oregon State Bar, Tigard, Oregon. I presented on the topic of ethics and professionalism in the courtroom, and I discussed the difference between what an attorney is allowed to do and what a professional attorney should do. I have no notes, transcript, or recording. The address of the Oregon State Bar 16037 Southwest Upper Boones Ferry Road, Tigard, Oregon 97224.

October 6, 2017: Speaker, Cultural Competency and Professionalism in the Law, Law School Class, University of Oregon School of Law, Eugene, Oregon. Notes supplied.

September 14, 2017: Speaker, Best Practices in Judicial Settlement Conferences, Lane County Bar Association Luncheon, Lane County Bar Association, Eugene, Oregon. I spoke about best practice tips for successfully mediating a case in a judicial settlement conference. I have no notes, transcript, or recording. The address for the Lane County Bar Association is P.O. Box 11379 Eugene, Oregon 97440.

July 27, 2017: Speaker, Federal Conflicts with Oregon Legal Marijuana Programs, Lane County Bar Association, Eugene, Oregon. I spoke about the Lane County Circuit Court's handling of marijuana offenses in conditions of probation. I have no notes, transcript, or recording. The address for the Lane County Bar Association is P.O. Box 11379 Eugene, Oregon 97440.

June 21, 2017: Speaker, Outliers: Stories Beyond the I-5 Corridor, Oregon State Bar Diversity Section, Salem Oregon. I spoke about diversity in the legal profession outside of Portland. I have no notes, transcript, or recording. The address for the Oregon State Bar Diversity Section is 16037 Southwest Upper Boones Ferry Road, Tigard, Oregon 97224.

May 25, 2017: Speaker, The Death of a FED, Rental Owners Association, Eugene, Oregon. Notes supplied.

April 21, 2017: Speaker, Professionalism in the Courtroom, Oregon Trial Lawyers Association Leadership College, Oregon Trial Lawyers, Eugene, Oregon. I spoke on the topic of ethics and professionalism and the difference between what lawyers can do and what professional lawyers should do in the courtroom and in dealing with opposing parties. I have no notes, transcript or recording. The address for the Oregon Trial Lawyers Association is 812 Southwest Washington, Suite 900, Portland, Oregon 97205.

October 6, 2016: Panelist, A Hole in the Bucket: Diversity Retention in the Legal Profession, Oregon State Bar, Portland, Oregon. Presentation supplied.

September 18, 2015: Panelist, Public Speaking CLE, Oregon Asian Pacific American Bar Association, Portland, Oregon. I spoke about my experiences with and approach to public speaking. I have no notes, transcript, or recording. The address of the Oregon Asian Pacific American Bar Association is P.O. Box 1728, Portland, Oregon 97207.

February 6, 2015: Panelist, What Advice Would I Give My Law Student Self?, Lane County Women Lawyers and University of Oregon Women's Law Forum, Eugene, Oregon. I facilitated a table discussion of work-life balance. I have no notes, transcript, or recording, but press coverage is supplied. The address of Lane County Women Lawyers is 101 Southwest Main Street, 18th Floor, Portland, Oregon, 97204.

June 10, 2014: Speaker, Chasing Rainbows, Western Regional National Asian Pacific American Bar Association (NAPABA) Conference, National Asian Pacific American Bar Association, Portland, Oregon. Notes supplied.

April 22, 2014: Panelist, Judicial Settlement Conferences, Lane County Bar Association, Eugene, Oregon. Notes supplied.

May 17, 2013: Speaker, Does Race Matter?, Inaugural IMAGE Program, Oregon Minority Lawyers Association, Portland, Oregon. Notes supplied.

February 6, 2013: Speaker, Investiture of The Honorable James Egan, Oregon Court of Appeals, Salem, Oregon. Remarks and press coverage supplied.

January 20, 2011: Panelist, Challenges of Pro Se Litigation, NALS (National Association of Legal Support Professionals) of Lane County, Eugene, Oregon. Presentation supplied.

November 19, 2010: Presenter, Challenges of Pro Se Litigation, 3rd Annual Lane County Women Lawyers CLE Conference, Lane County Women Lawyers,

Eugene, Oregon. I discussed perspectives from the bench on challenges facing pro se litigants, particularly in family law cases. I have no notes, transcript, or recording, but press coverage is supplied. The address of Lane County Women Lawyers is 101 Southwest Main Street, 18th Floor, Portland, Oregon, 97204.

October 16, 2010: Speaker, Judicial Settlement Conferences, Annual Conference of the Family Law Section, Oregon State Bar, Gleneden Beach, Oregon. Notes supplied.

August 2008 (specific date unknown): Speaker, Winter's Hope, Opportunities for Law in Oregon (OLIO), Oregon State Bar, Bend, Oregon. I gave a keynote address intended to inspire law students of diverse backgrounds to stay in Oregon to practice law. I have no notes, transcript or recording. The address for the Oregon State Bar is 16037 Southwest Upper Boones Ferry Road, Tigard, Oregon 97224

June 11, 2008: Speaker, Meet the New Judges, New Lawyers Committee, Lane County Bar Association, Eugene, Oregon. I, along with a recently appointed colleague, met with local bar members to introduce ourselves and field questions from the audience about our judicial styles. I have no notes, transcript or recording. The address for the Lane County Bar Association is P.O. Box 11379 Eugene, Oregon 97440.

December 11, 2007: Speaker, Investiture of the Honorable Mustafa T. Kasubhai, Lane County Circuit Court, Oregon Judicial Department, Eugene, Oregon. Transcript and press coverage supplied.

October 31, 2006: Speaker, The Unpersuasive Medical Opinion (Updated), Lorman Education Services, Salem, Oregon. I spoke about the qualities and criteria for medical evidence and medical opinions in the context of workers' compensation law. I have no notes, transcript or recording. The address for Lorman Education Services is 698 12th Street Southeast, Salem, Oregon 97301.

October 27, 2006: Speaker, Deference to the Demeanor-Based Credibility Finding, Workers' Compensation Board, Salem, Oregon. I discussed the importance as appellate decision makers of deferring to demeanor-based credibility findings made by administrative law judges. I have no notes, transcript or recording. The address for the Workers' Compensation Board is 2601 25th Street Southeast, Suite 150, Salem, Oregon 97302.

May 19, 2006: Speaker, The Unpersuasive Medical Opinion, Workers' Compensation Section Annual Conference, Oregon State Bar, Gleneden Beach, Oregon. I spoke about the qualities and criteria for medical evidence and medical opinions in the context of workers' compensation law. I have no notes, transcript or recording. The address of the Oregon State Bar is 16037 Southwest Upper Boones Ferry Road, Tigard, Oregon 97224.

January 31, 2006: Speaker, Role of the Workers' Compensation Board, Lorman Education Services, Salem, Oregon. I discussed the scope of responsibilities of the Workers' Compensation Board. I have no notes, transcript or recording. The address for Lorman Education Services is 698 12th Street Southeast, Salem, Oregon 97301.

October 14, 2005: Speaker, Appellate Case Law Update, Workers' Compensation Board, Salem, Oregon. I presented on the most recent and significant appellate cases in workers' compensation law. I have no notes, transcript or recording. The address for the Workers' Compensation Board is 2601 25th Street Southeast, Suite 150, Salem, Oregon 97302.

September 23, 2005: Speaker, Combined Conditions and Other Workers' Compensation Trends, Oregon Law Institute, Portland, Oregon. I discussed recent developments in the law on analyzing medical evidence as it relates to workers' compensation cases. I have no notes, transcript or recording. The address for the Oregon Law Institute is 921 Southwest Morrison Street, Number 409, Portland, Oregon, 97205.

March 25, 2005: Panelist, The Burden of Proof Shift under ORS 656.266, Workers' Compensation Board, Salem, Oregon. I spoke about the developing Workers' Compensation Board case law around the statutory shifting of the burden of proving compensability on a workers' compensation claim. I have no notes, transcript, or recording. The address of the Workers' Compensation Board is 2601 25th Street Southeast, Suite 150, Salem, Oregon 97302.

January 28, 1998: Speaker, Landlord-Tenant Mediation Project, Rental Owners Association, Springfield, Oregon. I discussed a new program I was coordinating to mediate landlord-tenant disputes in Lane County. I have no notes, transcript, or recording. The address of the Rental Owners Association is 4217 Main Street, Suite E, Springfield, Oregon 97478.

May 22, 1997: Speaker, Take Back the Night, University of Oregon Women's Center and Sexual Assault Support Services, Eugene, Oregon. I spoke about the need for men to be engaged in the effort to end violence against women. I have no notes, transcript, or recording, but press coverage is supplied. The address of the University of Oregon Women's Center is 5216 University of Oregon, Eugene, Oregon 97403.

October 21, 1996: Panelist, Forum on Proposed Changes to the University of Oregon Student Conduct Code, University of Oregon, Eugene, Oregon. I spoke about language I helped draft (as an employee of the Office of Student Life and member of the Unwanted Sexual Behavior Task Force), which would add the lack of consent as an element of sexual assault. I have no notes, transcript, or

recording, but press coverage is supplied. The address of the University of Oregon is 1585 East 13th Avenue, Eugene, Oregon 97403.

May 12, 1996: Speaker, University of Oregon Law School Graduation, University of Oregon School of Law, Eugene, Oregon. I provided celebratory remarks about the accomplishments of our law school class and reflected on the significant responsibilities we would carry forward as practicing lawyers. I have no notes, transcript, or recording. The address of the University of Oregon School of Law is 1221 University of Oregon, Eugene, Oregon 97403.

March 7, 1996: Panelist, Student Organizing Inside College and University Corporations, Public Interest Environmental Law Conference, University of Oregon School of Law, Eugene, Oregon. I discussed student organizing within the institutional framework of student groups such as the Student Bar Association. I have no notes, transcript, or recording. The address of the University of Oregon School of Law is 1221 University of Oregon, Eugene, Oregon 97403.

March 6, 1996: Panelist, Student rally in support of peace in the Middle East, Oregon Hillel and Jewish Student Union, University of Oregon, Eugene, Oregon. I spoke about my hope for peace in the Middle East. I have no notes, transcript, or recording, but press coverage is supplied. The address of Oregon Hillel is 1059 Hilyard Street, Eugene, Oregon 97401.

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

I have searched my records, electronic databases, and the internet in an effort to identify all events and materials responsive to this question, but there may be other events and materials I have not been able to recall or identify.

Oregon Law Network (2023), http://law.uoregon.edu/careers/oregon-law-network. Copy supplied.

Emily Rogers, *A Commitment to the Struggle*, ETHOS (May 22, 2023). Copy supplied.

Video interview, Federal Public Defender Lisa Hay, recipient of the Roberts & Deiz Award, presented by Oregon Women Lawyers (May 12, 2023). Video supplied.

Brooke Strickland, *The Bar's Best—Wallace P. Carson Jr. Award for Judicial Excellence*, OREGON STATE BAR BULLETIN (Oct. 2022). Copy supplied.

Gary M. Stein, *From the Editor—Creating Conversations*, OREGON STATE BAR

BULLETIN (Feb./Mar. 2021). Copy supplied.

Melody Finnemore, *Orphan, Immigrant, Attorney: OSB President Liani Reeves Builds Community Through Law, Leadership and Mentorship*, OREGON STATE BAR BULLETIN (Jan. 2020). Copy supplied.

Cynthia Newton, *The Honorable Mustafa Kasubhai: Federal Court Magistrate*, MULTNOMAH LAWYER (Mar. 2019). Copy supplied.

Sheeba Roberts, *Judge's Biography: Honorable Magistrate Judge Mustafa Kasubhai*, THE VERDICT (2019). Copy supplied.

Celia Howes, *Judicial Spotlight: The Honorable Judge Mustafa Kasubhai*, FOR THE DISTRICT OF OREGON (Winter 2018/2019). Copy supplied.

Jack Moran, *DA, Judge Locked in Feud over Allegations of Bias - County Office Removes Judge Josephine Mooney from its Cases*, EUGENE REGISTER GUARD (Mar. 11, 2017). Copy supplied.

Jack Moran, *Some Fear Intolerance Creeping in After Vote*, EUGENE REGISTER GUARD (Nov. 16, 2016). Copy supplied.

Mary Anne Anderson, *Meet Lane County Circuit Judge Mustafa Kasubhai*, OREGON WOMEN LAWYERS ADVANCE SHEET (Spring 2013). Copy supplied.

Melody Finnemore, *A Century of Suffrage: How Women's Right to Vote Changed the Law, the Profession and Politics*, OREGON STATE BAR BULLETIN (Nov. 2012). Copy supplied.

Melody Finnemore, *Culture of Awareness: As Oregon's Population Grows More Diverse, the Legal Profession Strives for Multicultural Understanding*, OREGON STATE BAR BULLETIN (Nov. 2010). Copy supplied.

Bob Welch, *Learning of Life Behind the Badges*, EUGENE REGISTER GUARD (Oct. 7, 2010). Copy supplied.

Karen McCowan, *A Son's Own Path*, EUGENE REGISTER GUARD (July 12, 2010). Copy supplied.

Kirk Bailey, *The Honorable Mustafa Kasubhai: New Judge Brings Changes to Lane County*, OREGON QUARTERLY (Autumn 2009). Copy supplied.

Bill Bishop, *Two UO Law Grads Tapped for Judgeships*, EUGENE REGISTER GUARD (Oct. 20, 2007). Copy supplied.

Bill Bishop, *Jury Awards $769,000 in Death Suit*, EUGENE REGISTER GUARD

(Dec. 21, 1999). Copy supplied.

Associated Press, *Family Awarded $769,000 in Lawsuit*, THE WORLD (Dec. 21, 1999). Copy supplied.

Local Reaction to Election Results, OREGON DAILY EMERALD (Nov. 6, 1996). Copy supplied.

Dan Twetten and Romel Hernandez, *Issue of Consent Primes UO Hunt for Code on Sex*, THE OREGONIAN (Nov. 1, 1996). Copy supplied.

Jennifer Schmitt, *Law Commencement Open to Public*, OREGON DAILY EMERALD (May 10, 1996). Copy supplied.

Doug Irving, *April Fools' Trick Angers Minorities*, OREGON DAILY EMERALD (Apr. 5, 1996). Copy supplied.

Joni James, *UO Student Bar Supports Free Legal Aid Requirement*, EUGENE REGISTER GUARD (Mar. 13, 1996). Copy supplied (reprinted in multiple outlets).

Regina Brown, *Computer Requirement Irks Students*, OREGON DAILY EMERALD (Oct. 6, 1995). Copy supplied.

Kaly Soto, *Group Calls for Unity, Recruitment*, OREGON DAILY EMERALD (Aug. 22, 1994). 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.

From 2003 to 2007 I served as a Board Member on the Oregon Workers' Compensation Board. I was nominated by Oregon Governor Theodore Kulongoski, and then confirmed by the Oregon Senate. The Oregon Workers' Compensation Board reviews *de novo* all workers' compensation appeals of administrative law judges' final orders for all work-related injury claims involving Oregon employers, excluding claims that fall under federal jurisdiction. The Board issues decisions in panels of two Board Members. A third Board Member resolves ties. Significant appellate decisions are made en banc.

From 2007 to 2018, I served as an Oregon State Circuit Court Judge seated in Lane County, Oregon. I was appointed by Oregon Governor Theodore Kulongoski. Oregon State Circuit Court is a trial court of general jurisdiction. I presided over matters involving state civil, criminal, family, and juvenile cases, and appeals from administrative and municipal courts. I also presided over a substantial number of civil and criminal judicial settlement conferences.

Since September 21, 2018, I have served as a United States Magistrate Judge in the United States District Court for the District of Oregon. I was appointed after being screened and interviewed by a merit selection committee, then interviewed and selected by the Board of Judges in the District of Oregon. In Oregon, the judicial governance plan confers all authority on magistrate judges that is allowed by statute. To that end, I receive assignments from the civil assignment protocol based on the same consideration district judges receive. As a magistrate judge, I have a wide range of duties in both criminal and civil cases. I have been assigned more than 900 civil cases since 2018, and in 266 of those the parties have consented to magistrate judge jurisdiction. My workload also includes a substantial number of judicial settlement conferences in civil cases. My criminal assignments include presiding over initial appearances, arraignments, and detention hearings in criminal cases. I am responsible for the review and authorization of search warrants and arrest warrants.

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

As a judge on the Oregon State Circuit Court, I presided over more than 500 trials. As a magistrate judge, I have presided over four jury trials.

i. Of these cases, approximately what percent were:

jury trials:	20%
bench trials:	80%

ii. Of these cases, approximately what percent were:

civil proceedings:	80%
criminal proceedings:	20%

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

See attached list of citations.

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

1. *Ireland, M.D. v. Bend Neurological Associates, et al.*, No. 6:16-cv-02054-MK, 2021 WL 1229937 (D. Or. Mar. 31, 2021), *aff'd*, No. 21-35337, 2023 WL 2783240 (9th Cir. Apr. 5, 2023)

Plaintiff brought this claim alleging unlawful conspiracy in restraint of trade in

violation of 15 U.S.C § 1 ("Sherman Act") and intentional interference with economic relations ("IIER") in violation of Oregon common law. Plaintiff and the individual defendants were neurologists and were variously associated with the business entity defendants. The individual parties had hospital privileges and their insurance carrier required that each neurologist supply emergency call-coverage. The individual parties had agreements to provide call-coverage to each other. In 2013, the individual defendants withdrew their agreements to provide call-coverage for plaintiff. Because he could no longer secure call-coverage for his patients when he was unavailable, plaintiff alleged he was forced to leave the region and sell his medical office building at a substantial discount.

This case was previously assigned to another judge who granted defendants' motions to dismiss for failure to state a claim. The Ninth Circuit affirmed the dismissal of the claim relating to a *per se* violation of the Sherman Act but reversed and remanded the "rule of reason" Sherman Act and IIER claims. *Ireland v. Bend Neurological Assoc. LLC, et al.*, 748 F. App'x 166 (9th Cir. 2019). After remand, the parties consented to magistrate judge jurisdiction. I handled several discovery disputes before the close of discovery, after which the plaintiff and defendants filed cross-motions for summary judgment. Once a plaintiff presents evidence of a "rule of reason" Sherman Act violation, the burden shifts to defendants to offer evidence that they had a legitimate objective that was served by the challenged behavior. Here, defendants presented substantial evidence that the deterioration of the collegial relationship between the parties objectively compromised patient care. I found that ensuring patient care was a legitimate objective, and I granted defendants' motions for summary judgment against plaintiff's two remaining claims. The Ninth Circuit affirmed my decision on appeal.

Counsel for Plaintiff
Pro se

Counsel for Defendant Bend Neurological Associates, LLC
Thomas Armosino
Frohnmayer, Deatherage, et al.
2592 East Barnett Road
Medford, OR 97501
(541) 779-2333

Counsel for Defendant Bend Memorial Clinic, P.C.
Matthew Kalmanson
Hart Wagner, LLP
1000 Southwest Broadway, Suite 2000
Portland, OR 97205
(503) 222-4400

Stephanie Kucera

Hart Wagner, LLP
439 Southwest Umatilla Avenue
Redmond, OR 97756
(541) 548-6044

Counsel for Defendant Bucholz, M.D.
Martha J. Hodgkinson
Hodgkinson Street Mepham LLC
1620 Southwest Taylor Street, Suite 350
Portland, OR 97205
(503) 222-1143

2. *McIntyre v. City of Springfield – Springfield Police Dep't*, No. 6:21-CV-1709-MK, 2022 WL 18539657 (D. Or. Sept. 22, 2022), *adopted*, 2023 WL 1420491 (D. Or. Jan. 31, 2023)

Plaintiff in this case—the only female recruit in her training class—was fired after consensual sexual encounters with male coworkers who remained employed with the Springfield Police Department (SPD). She sued SPD and individual police officers for, among other things, sex discrimination under Title VII, a violation of her First Amendment right to speech, a due process violation relating to a right to intimate association, and a claim under the Oregon Public Accommodations Act. Defendants moved to dismiss plaintiff's complaint because it failed to allege sufficient facts.

After hearing oral argument, I issued a findings and recommendation recommending granting, in part, SPD's motion to dismiss, finding plaintiff had not appropriately pleaded *Monell*, public accommodation, and First Amendment claims. I recommended allowing plaintiff leave to amend her complaint. Additionally, I found that plaintiff had sufficiently pleaded an intimate association claim under Ninth Circuit caselaw. The district judge assigned to the case adopted my findings and recommendation. The case is ongoing and remains in the discovery phase of litigation.

Counsel for Plaintiff
Meredith A. Holley
Law Office of Meredith Holley
207 East 5th Avenue, Suite 254
Eugene, OR 97401
(458) 221-2671

Counsel for Defendants
Tracy M. McGovern
Frohnmayer Deatherage Jamieson Moore Armosino & McGovern
2592 East Barnett Road
Medford, OR 97504

(541) 779-2333

Kenneth S. Montoya
Law Offices of Montoya, Hisel and Associates
901 Capitol Street Northeast
Salem, OR 97301
(503) 480-7250

3. *ADASA, Inc. v. Avery Dennison Corp.*, No. 6:17-cv-01685-MK, 2021 WL 5921374 (D. Or. Dec. 15, 2021), *aff'd in part, rev'd in part, vacated in part, remanded*, 55 F.4th 900 (Fed. Cir. 2022), *cert. denied*, 143 S. Ct. 2561 (2023) (Mem)

This case involved a patent infringement claim concerning a technology relating to radio frequency identification tags, and specifically, the technology involved in encoding unique serial numbers on embedded chips. The parties consented to magistrate judge jurisdiction. Preceding the first jury trial, I handled extensive discovery motions relating to defendant's production of electronic discovery, several motions for summary judgment filed by both parties, and extensive pre-trial motions. After an eight-day trial, the jury found for the plaintiff and awarded damages.

Following the trial, I presided over post-trial motions associated with discovery sanctions, attorney fees, and a motion for a new trial. Defendant appealed the judgment, and the Federal Circuit affirmed in part, reversed in part, vacated in part, and remanded the case for a trial. Specifically, the Federal Circuit remanded the matter to me for a trial on invalidity of the patent, on which I had previously granted summary judgment in favor of plaintiff. Defendant filed a petition for *certiorari*, which the Supreme Court denied.

In preparation for the second jury trial, I ruled on a Daubert motion, resolved extensive evidentiary matters relating to expert testimony, and managed a vigorous and active trial practice by both parties' counsel. The jury returned a verdict in plaintiff's favor, finding the patent valid, affirming the damage award from the first trial. Currently, the parties are addressing post-trial motions, including motions for a new trial and attorney fees. Additionally, I am addressing the issue of sanctions, which the Federal Circuit previously remanded.

Counsel for Plaintiff
Jonathan Suder
Glenn Orman
Friedman Suder and Cooke
604 East 4th Street, Suite 200
Fort Worth, TX 76102
(817) 334-0400

Counsel for Defendant
Charanjit Brahma
Benesch Friedlander Coplan and Aronoff
100 Pine Street, Suite 3100
San Francisco, CA 94111
(628) 600-2250

Nicholas Secco
Benesch Friedlander Coplan and Aronoff
71 South Wacker Drive, Suite 1600
Chicago, IL 60606
(312) 212-4949

4. *Smith v. Tumalo Irrigation District*, 6:20-cv-0345-MK, 2022 WL 3357678 (D. Or. May 2, 2022), *adopted*, 2022 WL 4551898 (D. Or. Sept. 29, 2022)

Plaintiffs brought this action pursuant to the National Environmental Policy Act ("NEPA") and various state law claims, challenging an irrigation modernization initiative. Plaintiffs opposed defendant's plan to bury its open water canals, disputing that the easement granted to defendant under the Carey Desert Land Act of 1894 ("Carey Act") allowed the right to bury irrigation pipe. Plaintiffs moved for partial summary judgment arguing the burying of pipes exceeded the scope of defendant's easement. Defendant also moved for partial summary judgment arguing that the easement authorized, as a matter of law, the burying of the irrigation pipe.

The parties submitted an extensive record and briefing. After oral argument, I issued a findings and recommendation analyzing the scope of the Carey Act's grant of easements, concluding that its scope would allow defendant to bury its irrigation pipe. I recommended denying plaintiffs' motion for partial summary judgment and granted defendant's motion for partial summary judgment. The district judge assigned to review my findings and recommendation adopted my recommendation. Subsequently, plaintiffs and federal defendant, the Natural Resources Conservation Service ("NRCS"), filed cross motions for summary judgment on plaintiffs' federal claims of NEPA violations and violations of the Watershed Protection Act. The plaintiffs argued that defendant NRCS failed to comply with NEPA in approving an environmental assessment that failed to consider a reasonable range of alternatives and consider other relevant factors, such as cost of property devaluation.

I issued a findings and recommendation analyzing the NEPA requirements for an adequate environmental assessment and concluded that defendant NRCS complied with NEPA. For related reasons, I concluded that defendant NRCS did not violate the Watershed Protection Act. I recommended that plaintiffs' motion for partial summary judgment be denied and defendant NRCS's motion for

summary judgment be granted. Copy supplied. The findings and recommendation has been referred to a district judge for consideration.

Counsel for Plaintiffs
William H. Sherlock
Esack F. Grueskin
Hutchinson Cox Coons Orr & Sherlock
940 Willamette Street, Suite 400
Eugene, OR 97401
(541) 686-9160

Counsel for Defendant Tumalo Irrigation District
Mark G. Reinecke
Bryant Lovlien & Jarvis
591 Southwest Mill View Way
Bend, OR 97702
(541) 382-4331

Counsel for Defendants Natural Resources Conservation Service and Alvarado
Sean E. Martin
United States Attorney's Office
District of Oregon
1000 Southwest Third Avenue, Suite 600
Portland, OR 97204
(503) 727-1010

5. *Cram v. Local 503 SEIU*, No. 6:20-cv-00544-MK, 590 F. Supp. 3d 1330 (D. Or. 2022), *appeal docketed*, No. 22-35321 (9th Cir. Apr. 21, 2022)

Plaintiffs alleged defendant, a public sector labor union, without their consent, collected certain union fees in violation of the First Amendment. In 1999, union members approved a monthly assessment dedicated to promoting and defending the interests of the membership through public interest campaigns and ballot measures. Defendant Oregon Department of Administrative Services processed the payroll deductions for SEIU 503, including this special assessment. Plaintiffs were members of SEIU 503 and signed an authorization for a payroll deduction for this special assessment but later resigned from union membership. The payroll deduction authorization provided that, upon cancellation, the payroll deduction would continue for a certain limited period. These post-resignation payroll deductions were the basis for plaintiffs' claims against defendants.

The parties consented to magistrate judge jurisdiction and filed cross-motions for summary judgment. For their First Amendment claims against SEIU 503, plaintiffs argued the union was a state actor. Defendants countered plaintiffs' position and further argued that plaintiffs' claim failed because deducting union assessments pursuant to a voluntary authorization of a union member cannot, as a

matter of law, violate the First Amendment. Based on Ninth Circuit controlling caselaw and the undisputed facts in the record, I concluded that SEIU 503 was not a state actor and that plaintiffs' claims failed as a matter of law because voluntary authorizations of payroll deductions do not support a First Amendment violation claim. Plaintiffs have appealed my order granting defendants' motion for summary judgment and denying their motion for summary judgment.

Counsel for Plaintiff
James G. Abernathy
Rebekah C. Millard
Freedom Foundation
P.O. Box 552
Olympia, WA 98507
(360) 956-3482

Counsel for Defendant SEIU
Corinne Johnson
Jeffrey B. Demain
Scott A. Kronland
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
(415) 421-7151

James S. Coon
Thomas, Coon, Newton & Frost
820 Southwest 2nd Avenue, Suite 200
Portland, OR 97204
(503) 228-5222

Counsel for Defendant Coba
Brian Simmonds Marshall
Sadie Forzley
Oregon Department of Justice
Trial Division, Special Litigation Unit
100 Southwest Market Street
Portland, OR 97201
(971) 673-1880

6. *Nat'l Labor Relations Bd. v. Oregon*, No. 6:20-cv-00203-MK, 2021 WL 4433161 (D. Or. Sept. 27, 2021), *appeal dismissed*, No. 21-35988, 2022 WL 1720939 (9th Cir. Jan. 18, 2022)

The National Labor Relations Board (NLRB) sought a declaratory judgment that the National Labor Relations Act (NLRA) preempted Or. Rev. Stat. § 659.785. That statute "create[d] a private cause of action for employees who are discharged

or disciplined for refusing to attend a 'mandatory meeting' at which an employer expresses its views about unionization," sometimes referred to as "captive audience meetings" during which management attempts to dissuade unions from forming.

The parties consented to magistrate judge jurisdiction. I granted the state's motion to dismiss the complaint, concluding that the NLRB failed to establish the required elements of Article III standing to challenge the state statute because it could not establish that the agency had suffered a concrete harm, nor could it establish that any action by the state caused the NLRB injury. I allowed the NLRB to amend its complaint, and after doing so, defendant moved to dismiss the complaint a second time. I dismissed plaintiff's amended complaint for the same reasons I previously dismissed its original complaint. Plaintiff filed a notice of appeal with the Ninth Circuit and subsequently voluntarily dismissed the appeal.

Counsel for Plaintiff
Pia Mercedes Winston
National Labor Relations Board
Contempt, Compliance & Special Litigation Branch
1015 Half Street, Southeast, Suite 4054
Washington, DC 20003
(202) 273-0111

Helene Lerner
National Labor Relations Board
Division of Legal Counsel
1015 Half Street, Southeast
Suite Fourth Floor
Washington, DC 20003
(202) 273-3738

Counsel for Defendant
Christina L. Beatty-Walters
Carla Scott
Oregon Department of Justice
100 Southwest Market Street
Portland, OR 97201
(971) 673-1880

7. *Duncan v. Eugene Sch. Dist. 4J*, 6:19-cv-0065-MK, 2021 WL 3145966 (D. Or. July 26, 2021)

Plaintiff brought claims against an Oregon school district alleging violations of the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act. Specifically, plaintiff alleged that his high school French teacher refused to implement the

accommodations described in the student's Individualized Education Program (IEP) and made belittling remarks toward him.

The parties consented to magistrate judge jurisdiction. Defendant filed a motion to dismiss and argued, among other things, that the IDEA claims were time-barred. I agreed and granted the motion to dismiss relating to the IDEA claims and state law claims. However, I concluded that plaintiff's ADA and Section 504 claims survived because, under a theory of a hostile learning environment, the allegations of bullying and harassment could be found to be continuing violations. I subsequently denied defendant's summary judgment motion, finding sufficient evidence from which a jury could reasonably conclude defendant violated plaintiff's rights under a hostile learning environment theory. Thereafter, the parties settled the case.

Counsel for Plaintiff
Kimberly Hope Sherman
P.O. Box 728
Eugene, OR 97440
(503) 910-6172

Marianne G. Dugan
Attorney at Law
1430 Willamette Street, Suite 359
Eugene, OR 97401
(541) 338-7072

Counsel for Defendant
Elizabeth L. Polay
Rebekah R. Jacobson
Garrett Hemann Robertson P.C.
1011 Commercial Street Northeast
Salem, OR 97301
(503) 581-1501

8. *Coles Valley Church v. Oregon Land Use Board of Appeals*, No. 6:20-CV-661-MK, 2020 WL 6287477 (D. Or. Oct. 27, 2020)

Plaintiffs operated a small church in rural Oregon. They applied for a county permit to build a residence for the church pastor on its property. Plaintiffs held a sincere religious belief that to serve the community effectively, the pastor needed to live on the church property. The county initially granted the permit, then revoked it after the neighboring property owners objected. Plaintiffs argued that the Religious Land Use and Institutionalized Persons Act ("RLUIPA") prevented the state from denying the permit. The Oregon Land Use Board of Appeals denied plaintiff's application, the Court of Appeals affirmed the decision without opinion, and the Oregon Supreme Court denied the petition for review.

Plaintiffs then sued in the District of Oregon, alleging violations of RLUIPA, and the state moved to dismiss arguing that the court lacked subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine as well as claim and issue preclusion. The parties consented to magistrate judge jurisdiction. Based on a detailed analysis of the applicability of the *Rooker-Feldman* doctrine and consideration of the state claims structure requiring exhaustion of remedies, I concluded plaintiffs were not barred from suit because of the *Rooker-Feldman* doctrine, nor did claim and issue preclusion apply. I therefore denied defendants' motion to dismiss. The parties subsequently reached a settlement.

Counsel for Plaintiff
Ray D. Hacke
Pacific Justice Institute
317 Court Street Northeast, Suite 202
Salem, OR 97301
(503) 917-4409

Counsel for Defendants
Kenneth C. Crowley
Oregon Department of Justice
Trial Division
1162 Court Street Northeast
Salem, OR 97301
(503) 947-4700

Hon. Justin E. Kidd (formerly with the Oregon Department of Justice)
Marion County Justice Court
4660 Portland Road Northeast, Suite 107
Salem, OR 97305
(503) 576-7200

9. *White v. Taylor et al.*, No. 6:18-cv-00550-MK, 2020 WL 5649629, (D. Or. July 2, 2020), *adopted*, 2020 WL 5649725 (D. Or. Sept. 22, 2020)

Plaintiff, a police officer, filed this employment discrimination suit against the chief of police and the city alleging, among other things, a violation of her free speech rights under the First and Fourteenth Amendments. Specifically, she alleged the chief of police initiated an investigation that ultimately led to her termination after discovering "a written log of policy violations [plaintiff] observed at the Department" that she planned to share with city officials. Defendants moved for summary judgment. After analyzing the claim under First Amendment jurisprudence, I concluded plaintiff had established a *prima facie* First Amendment retaliation claim. Subsequently, the parties consented to magistrate judge jurisdiction. The case moved toward trial after extensive pre-trial motions. The case settled before trial commenced.

Counsel for Plaintiff
Daniel E. Thenell
Thenell Law Group
12909 Southwest 68th Parkway, Suite 290
Portland, OR 97223
(503) 372-6450

Counsel for Defendants
Steven A. Kraemer
Kraemer & Lewis
P.O. Box 1469
Lake Oswego, OR 97035
(800) 922-2684

Andrew D. Campbell
Heltzel Williams PC
P.O. Box 1048
Salem, OR 97308
(503) 585-4422

10. *State v. Gonzalez*, No. 201420762, *aff'd*, 292 Or. App. 342 (2018), *review denied*, 363 Or. 815 (2018)

The state charged defendant with one count of delivery of methamphetamine and one count of possession of methamphetamine. Defendant proceeded by way of a stipulated facts trial after I denied his motion to suppress evidence of methamphetamine obtained under a search warrant. Defendant arrived at an acquaintance's home where he planned to meet another person "to do an exchange." The home's resident acquiesced to defendant's entry into the home. Earlier that day the police obtained a search warrant for that home. When the police arrived to execute the search warrant, they observed defendant standing on stairs connected to the home. They searched under the stairs and found methamphetamine. Defendant argued at the hearing on the motion to suppress that, as a guest in the home, he had a protected privacy interest in the area in which the police found the methamphetamine. I ruled from the bench that defendant did not have a protected privacy interest in this instance and denied the motion to suppress. After I found defendant guilty following the stipulated facts trial, I sentenced him to 95 months in prison. The Court of Appeals affirmed my denial of the motion to suppress, explaining that defendant's status as a guest, without any close connection to a resident, and defendant's purported reason for being at the home (to pay for the spaying of a cat), did not extend to defendant a protected privacy interest.

Counsel for State
Daniel D. Higgins

Klamath County District Attorney's Office
316 Main Street
Klamath Falls, OR 97601
(541) 883-5147

Counsel for Defendant
Shaun S. McRea
Oregon Criminal Defense Lawyers Association
101 East 14th Avenue
Eugene, OR 97401
(541) 686-8716

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. *Ninkasi Holding Co. v. Nude Beverages, Inc., et al.*, 6:21-cv-01592-MK, 2023 WL 4565453 (D. Or. June 6, 2023), *adopted*, 2023 WL 4563757 (D. Or. July 17, 2023)

Counsel for Plaintiff
Nicholas A. Kampars
Wildwood Law Group LLC
3519 Northeast 15th Avenue, Suite 362
Portland, OR 97212
(503) 564-3049

Counsel for Defendant
Daniel J. Oates
Miller Nash LLP
605 5th Avenue South, Suite 900
Seattle, WA 98104
(206) 777-7537

2. *ADASA, Inc. v. Avery Dennison Corp.*, No. 6:17-cv-01685-MK, 2023 WL 3775332 (D. Or. June 2, 2023)

Counsel for Plaintiff
Jonathan Suder
Glenn Orman
Friedman Suder and Cooke
604 East 4th Street, Suite 200
Fort Worth, TX 76102
(817) 334-0400

Counsel for Defendant
Charanjit Brahma
Benesch Friedlander Coplan and Aronoff
100 Pine Street, Suite 3100
San Francisco, CA 94111
(628) 600-2250

Nicholas Secco
Benesch Friedlander Coplan and Aronoff
71 South Wacker Drive, Suite 1600
Chicago, IL 60606
(312) 212-4949

3. *Boudjerada v. City of Eugene, et al.*, No. 6:20-cv-01265-MK, 2023 WL 3903751 (D. Or. May 24, 2023), *adopted*, 2023 WL 3886114 (D. Or. June 8, 2023)

Counsel for Plaintiff
Marianne Dugan
Lauren Regan
Civil Liberties Defense Center
1711 Willamette Street, Suite 301
Eugene, OR 97401
(541) 687-9180

Counsel for Defendants
Benjamin Miller
Eugene City Attorney's Office
101 West 10th Avenue, Suite 203
Eugene, OR 97401
(541) 682-8439

4. *Spear v. State Farm Mutual Auto. Ins. Co.*, No. 6:22-cv-00113-MK, 2023 WL 1778657 (D. Or. Feb. 6, 2023), *appeal docketed*, No. 23-35356 (9th Cir. May 24, 2023)

Counsel for Plaintiff
Travis Eiva
Eiva Law
1165 Pearl Street
Eugene, OR 97401
(541) 636-7480

Counsel for Defendant
Ralph C. Spooner
Spooner & Much, P.C.

530 Center Street, Suite 712
Salem, OR 97301
(503) 378-7777

5. *Ireland, M.D. v. Bend Neurological Associates, et al.*, No. 6:16-cv-02054-MK, 2021 WL 1229937 (D. Or. March 31, 2021), *aff'd*, No. 21-35337, 2023 WL 2783240 (9th Cir. April 5, 2023)

Counsel for Plaintiff
Pro se

Counsel for Defendant Bend Neurological Associates, LLC and Defendants Bell, Schloesser, and Schaben
Thomas Armosino
Frohnmayer, Deatherage, et al.
2592 East Barnett Road
Medford, OR 97501
(541) 779-2333

Counsel for Defendant Bend Memorial Clinic, P.C. and Defendants Abendroth and Griffin
Matthew Kalmanson
Hart Wagner, LLP
1000 Southwest Broadway, Suite 2000
Portland, OR 97205
(503) 222-4400

Stephanie Kucera
Hart Wagner, LLP
439 Southwest Umatilla Avenue
Redmond, OR 97756
(541) 548-6044

Counsel for Defendant Bucholz, M.D.
Martha J. Hodgkinson
Hodgkinson Street Mepham LLC
1620 Southwest Taylor Street, Suite 350
Portland, OR 97205
(503) 222-1143

6. *McIntyre v. City of Springfield – Springfield Police Dep't*, No. 6:21-cv-1709-MK, 2022 WL 18539657 (D. Or. Sept. 22, 2022), *adopted*, 2023 WL 1420491 (D. Or. Jan. 31, 2023)

Counsel for Plaintiff
Meredith A. Holley

Law Office of Meredith Holley
207 East 5th Avenue, Suite 254
Eugene, OR 97401
(458) 221-2671

Counsel for Defendants
Tracy M. McGovern
Frohnmayer Deatherage Jamieson Moore Armosino & McGovern
2592 East Barnett Road
Medford, OR 97504
(541) 779-2333

Kenneth S. Montoya
Law Offices of Montoya, Hisel and Associates
901 Capitol Street Northeast
Salem, OR 97301
(503) 480-7250

7. *University of Oregon v. Phillips*, 593 F. Supp. 3d 1062 (D. Or. 2022)

Counsel for Plaintiff
Andrea D. Coit
Hutchinson Cox
940 Willamette Street, Suite 400
P.O. Box 10886
Eugene, OR 97440
(541) 686-9160

Counsel for Defendant
Daniel Thennell
Thennell Law Group, P.C.
12909 Southwest 68th Parkway, Suite 290
Portland, OR 97223
(503) 372-6450

8. *Smith v. Tumalo Irrigation District*, 6:20-cv-0345-MK, 2022 WL 3357678 (D. Or. May 2, 2022), *adopted*, 2022 WL 4551898 (D. Or. Sept. 29, 2022).

Counsel for Plaintiffs
William H. Sherlock
Esack F. Grueskin
Hutchinson Cox Coons Orr & Sherlock
940 Willamette Street, Suite 400
Eugene, OR 97401
(541) 686-9160

Counsel for Defendant Tumalo Irrigation District
Mark G. Reinecke
Bryant Lovlien & Jarvis
591 Southwest Mill View Way
Bend, OR 97702
(541) 382-4331

Counsel for Defendants Natural Resources Conservation Service and Mr. Alvarado
Sean E. Martin
United States Attorney's Office
District of Oregon
1000 Southwest Third Avenue, Suite 600
Portland, OR 97204
(503) 727-1010

9. *Francisco v. City of Redmond*, No. 6:20-cv-0096-MK, 2021 WL 4452015 (D. Or. July 15, 2021), *adopted*, 2021 WL 4449973 (D. Or. Sept. 28, 2021)

Counsel for Plaintiff
Todd Grover
Ward Grover, LLP
354 Northeast Irving Avenue
Bend, OR 97701
(541) 312-5150

Counsel for Defendants
Elizabeth A. Jones
Capitol Legal Services
901 Northeast Capitol Street
Salem, OR 97301
(503) 480-7253

Gerald L. Warren
Law Office of Gerald L. Warren and Associates
901 Capitol Street Northeast
Salem, OR 97301
(503) 480-7252

10. *Coles Valley Church v. Oregon Land Use Board of Appeals, et al.*, No. 6:20-cv-0661-MK, 2020 WL 6287477 (D. Or. Oct. 27, 2020)

Counsel for Plaintiff
Ray D. Hacke
Pacific Justice Institute
317 Court Street Northeast, Suite 202

Salem, OR 97301
(503) 917-4409

Counsel for Defendants
Kenneth C. Crowley
Oregon Department of Justice
Trial Division
1162 Court Street Northeast
Salem, OR 97301
(503) 947-4700

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

ADASA, Inc. v. Avery Dennison Corp., No. 6:17-cv-01685-MK, 2021 WL 5921374 (D. Or. Dec. 15, 2021), *aff'd in part, rev'd in part, vacated in part, remanded*, 55 F.4th 900 (Fed. Cir. 2022), *cert. denied*, 143 S. Ct. 2561 (2023)

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.

Friedenberg v. Lane County, 6:18-cv-0177MK, 2020 WL 7779068 (D. Or. Nov. 6, 2019), *adopted*, 2020 WL 7779068 (D. Or. Dec. 31, 2020), *rev'd*, 68 F.4th 1113 (9th Cir. 2023), *reh'g en banc denied*, No. 21-35078 (9th Cir. Aug. 25, 2023). Victims and victims' estates brought a negligence and wrongful death action in state court against a federally funded community health center and its employees arising from a failure to report a patient's repeated failures to comply with his court-ordered mental health treatment plan prior to the patient killing or injuring victims during a psychotic breakdown. The case was removed to federal court, and victims and estates moved to remand. Plaintiffs argued that the claims arose out of state law and there was no diversity jurisdiction. Defendants argued that the United States should be substituted as the only defendant in this action because of the federal-officer status of some of the individual defendants. I concluded that plaintiffs were not defendants' patients and had no other germane relationship to defendants such that federal law might impose immunity on defendants. I recommended granting the motion and remanding to state court, and the district court adopted my recommendations. Defendants appealed, and the Ninth Circuit reversed, holding in relevant part, that hospital and employees sufficiently alleged they acted under color of federal office, as could support removal under federal-officer removal statute; and that as a matter of first impression, failure of hospital and employees to comply with alleged reporting obligations was a "related function" under immunity provision of PHSA granting public health service employees immunity from certain claims arising out of their performance of medical, surgical, dental or related functions. The case is ongoing.

Robert K. v. Comm'r, 2021 WL 4127754 (D. Or. 2021), *rev'd sub nom. Kamp v. Kijakazi*, 2023 WL 1879469 (9th Cir. 2023). Plaintiff appealed the final opinion of the Commissioner of the Social Security Administration denying his applications for Disability Insurance Benefits and Supplemental Security Insurance, and I affirmed the Commissioner's decision. The Ninth Circuit reversed, finding on *de novo* review that the administrative law judge's decision was based upon legal error and remanded for further proceedings for further consideration and development of evidence.

ADASA, Inc. v. Avery Dennison Corp., No. 6:17-cv-01685-MK, 2021 WL 5921374 (D. Or. Dec. 15, 2021), *aff'd in part, rev'd in part, vacated in part, remanded*, 55 F.4th 900 (Fed. Cir. 2022), *cert. denied*, 143 S. Ct. 2561 (2023). In this patent trial involving claims of validity and patent infringement, I granted summary judgment in part to patent owner (plaintiff) on the validity of certain product categories. Thereafter, a jury found in plaintiff's favor on patent infringement and awarded more than $40,000,000 in damages as determined by applying a royalty rate to the number of infringing products. After trial I ordered defendant to pay discovery sanctions and plaintiff's attorney fees. The Federal Circuit affirmed in part, reversed in part, vacated in part, and remanded in part for a new trial on the narrow issue of patent invalidity and to recalculate the sanctions award. After the denial of defendant's petition for *certiorari*, the case proceeded to a second jury trial on the sole issue of patent validity. The jury found for plaintiff.

State v. Barden, No. 17CR27975, *aff'd in part, rev'd in part*, 309 Or. App. 87 (2021). A jury convicted defendant in July 2017 of driving under the influence of intoxicants, reckless driving, misdemeanor driving while suspended or revoked, and recklessly endangering another person. In accordance with Oregon law at the time, I declined to give a unanimous jury instruction. The Court of Appeals reversed and remanded the case to the trial court pursuant to *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), which held that nonunanimous jury verdicts violated the Sixth Amendment. The defendant also appealed my evidentiary ruling allowing the state to offer authenticity evidence of jail phone calls. The Court of Appeals affirmed, holding that an officer's testimony regarding electronic recordings of calls involving defendant was sufficient to meet the state's prima facie authenticity burden. On remand, the state elected not to retry the case and moved to dismiss the charges.

State v. Estrada-Robles, No. 17CR49171, *rev'd*, 312 Or. App. 357 (2021). A jury convicted defendant in March 2018 on first-degree sexual abuse and second-degree unlawful sexual penetration. In accordance with Oregon case law at the time, I instructed the jury that it could return a nonunanimous verdict. I sentenced defendant to 150 months in prison. The Court of Appeals reversed, finding that the instruction was erroneous in light of the Supreme Court's decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). I no longer served on the state court bench at

the time the matter was remanded. On remand, the state retried the case to another trial judge and a jury convicted defendant. The trial judge sentenced defendant to 75 months in prison.

State v. Madison, No. 18CR18370, *rev'd*, 303 Or. App. 737 (2020). Following a bench trial, I found defendant guilty of promoting prostitution, and sentenced him to 50 months in prison. Defendant appealed, arguing the evidence was only sufficient to support a conviction of attempted promoting prostitution. The Court of Appeals held that I erred in convicting defendant for promoting prostitution because there was no evidence that prostitution in fact occurred. The Court of Appeals reversed and remanded for resentencing based on the lesser-included attempt offense. Attempted promoting prostitution is an unclassified Class C felony. I no longer served on the state court bench at the time the matter was remanded. At sentencing on remand, the sentencing judge treated the convictions as Class A misdemeanors and sentenced defendant to time served.

State v. Clay, No. 16CR56503, *aff'd in part, rev'd in part*, 301 Or. App. 599 (2019). A jury convicted defendant of two counts of first-degree sexual abuse, one count of third-degree sexual abuse, and two counts of using a child in a display of sexually explicit conduct. This case involved the sexual abuse of two sisters. Defendant moved for judgment of acquittal on the two counts of using a child in display arguing this crime cannot apply to a person's observation of a victim's sexual or intimate parts in the course of sexually abusing the victim. I denied the motion, considering that the "display" offenses were capable of being separately committed from other sexual abuse crimes. I sentenced defendant to 302 months in prison on all counts. The Court of Appeals, however, reversed the "display" conviction, holding that the defendant's observation of minor victims' genitalia while committing sexual abuse was insufficient to support convictions for using a child in a display of sexually explicit conduct. The Court of Appeals affirmed the remaining sexual abuse convictions, and defendant's sentence was revised to 162 months in prison.

Matter of Marriage of Tanner, No. 15DR09673, *aff'd in part, rev'd in part*, 292 Or. App. 766 (2018), *review denied*, 363 Or. 727 (2018) (Table). After a bench trial, I ordered the dissolution of marriage, and among other things, ordered husband to pay child support. Husband's income derived from a business operation from which he took a draw. I relied on husband's expert testimony in determining his monthly income for calculating child support. While wife raised several assignments of error, the appellate court addressed only child support. The Court of Appeals found that when calculating the husband's income for purposes of child support, I erred by adopting the husband's proposed finding of income based on an expert's testimony of a reasonable salary for a person in husband's position, rather than income listed on tax returns. The court remanded for reconsideration of child support and affirmed on all other grounds.

State v. Folks, No. 201424377, *aff'd in part, rev'd in part*, 290 Or. App. 94 (2018). A jury convicted defendant of murdering his girlfriend. Defendant and girlfriend travelled from Mississippi to Oregon for seasonal construction employment. Defendant's recorded statement presented at trial described that he strangled his girlfriend while under the influence of methamphetamine. Defendant argued he did not have the requisite culpable mental state and that he lacked the ability to act intentionally because of a mental disease or defect brought on by meth-induced psychosis. Over defendant's objections, I instructed the jury that drug use, drug dependence, and drug-induced psychoses were not mental diseases or defects as those terms were used in the law. The Court of Appeals agreed and affirmed. It reversed my order imposing costs for extraditing defendant from Mississippi, however, because there was no evidence in the record on defendant's ability to pay.

State v. Schrepfer, No. 201425077, *rev'd*, 288 Or. App. 429 (2017). A jury convicted defendant of robbery in the second degree. Prior to the trial, I denied defendant's motion to suppress statements he made after initially invoking his right to remain silent, finding that there was a sufficient break between the initial invocation and defendant's statements. The Court of Appeals reversed, holding that defendant's statements to a law enforcement officer after the officer violated defendant's right against self-incrimination under state constitution were not unprompted and did not represent a voluntary waiver of his previously invoked right against self-incrimination. The Court of Appeals reversed and remanded the case to the trial court. The parties stipulated to a plea and sentencing resulting in a sentence of time served.

State v. Byam, No. 201322117, *rev'd*, 284 Or. App. 402 (2017). I accepted a change of plea and sentenced defendant to robbery in the first degree and unauthorized use of a motor vehicle (UUV). The crimes occurred when defendant acquired keys to a car after threatening the owner with a knife and then driving away. I imposed a sentence of 110 months in prison, with a portion of the sentence on the UUV to be served consecutively to the sentence for robbery. I reasoned that the UUV was an indication of defendant's willingness to commit more than one criminal offense. Defendant appealed his sentence and the Court of Appeals held that defendant was entitled to concurrent sentences for the offenses because the UUV was the end result of the robbery rather than evidence of a willingness to commit more than one criminal offense. The Court of Appeals remanded for resentencing consistent with its opinion, and I imposed a concurrent sentence of 90 months in prison.

Matter of the Marriage of Benson, No. 151309273, *rev'd*, 263 Or. App. 554 (2014), *appeal on remand*, 288 Or. App. 619 (2017). After a bench trial, I ordered the dissolution of marriage. I awarded the marital home to husband and awarded an equalizing judgment for a quarter of the home's value to wife. Husband appealed. The primary issue on appeal was the determination of wife's equalization judgment relating to the home. On appeal, the Court of Appeals

affirmed in part, reversed in part, and remanded. On remand, I entered a supplemental judgment vacating the prior $55,000 equalizing judgment and entering a $110,000 equalizing judgment. On appeal on remand, the Court of Appeals reviewed *de novo* and held that the portion of the value of the marital home that was fairly traceable to husband's premarital assets was $166,000, and the portion attributable to appreciation or improvements was $54,000; as to the $166,000 attributable to husband's separate premarital assets, husband rebutted the statutory presumption of equal contribution with respect to that portion of the home's value; and it was just and proper to award wife 75 percent of the portion of the home's value attributable to appreciation or improvements. The Court of Appeals remanded for entry of judgment.

State v. Kimbrell, No. 201316323, *aff'd in part, rev'd in part*, 281 Or. App. 20 (2016). A jury convicted defendant of second-degree assault. The criminal charges arose from an altercation between defendant and two other men. Defendant raised the defense of self-defense. At trial, one of the victims testified that defendant was acting aggressively toward him, and during the altercation, defendant stabbed him. Defendant testified that he did not act aggressively toward the victims but rather he was the victim and afraid for his life. The defendant requested jury instructions related to the use of deadly physical force in the course of self-defense. I declined to give the requested instructions because the instructions were confusing, and I otherwise found they would not be appropriate given the record at trial. I sentenced defendant to 100 months in prison. The Court of Appeals reversed in part, however, finding that in failing to give the requested instructions regarding permissible use of deadly physical force in self-defense, I committed reversible error. The court declined to address defendant's other assignments of error and remanded for resentencing. The parties reached a plea agreement in which defendant pleaded guilty to attempted assault in the second degree and I imposed a 60-month prison sentence.

State v. Kindler, Nos. 201309731, 201323403, *aff'd in part, rev'd in part*, 277 Or. App. 242 (2016). A jury convicted defendant, following consolidation of cases, of first-degree theft by receiving, two counts of unlawful possession of methamphetamine, and felon in possession of a firearm. The Court of Appeals remanded in part, finding that: defendant was entitled to continuance of trial on one of the unlawful possession of methamphetamine charges; defendant was prejudiced by my denial of his request for continuance; and defendant's "willfulness" in failing to appear for court proceeding could not be used as a judicially noticed sentencing enhancement consideration. The Court of Appeals remanded for resentencing. In August 2023, the court granted defendant's motion to expunge his record of conviction, and those records are now sealed.

State v. Strye, No. 201210945, *rev'd*, 273 Or. App. 365 (2015). A jury convicted defendant of fourth-degree assault and first-degree criminal mistreatment. Defendant worked at a care facility assisting residents with various disabilities. In this case, defendant was assisting a resident with autism and other conditions.

When the resident became upset, coworkers testified that defendant "punched" the resident in the head causing her injuries. While defendant denied he caused the resident injury, he asked for a jury instruction on self-defense, which I denied. The Court of Appeals reversed my decision, finding that a defendant does not lose the ability to present a claim of self-defense when he refuses to admit that his act caused an injury. The Court of Appeals reversed and remanded the case to the trial court. The state elected not to retry the case and moved to dismiss the charges.

State v. Patterson, No. 201217651, *rev'd*, 269 Or. App. 226 (2015). Proceedings were brought to revoke defendant's probation. I revoked defendant's probation and sentenced him to prison, including two consecutive 18–month terms. The Court of Appeals reversed, holding that I lacked authority to impose a prison sentence but instead was required to impose sanctions on a revocation of probation instead. On remand, I corrected the judgment, revoked probation, and imposed two consecutive 18-month terms of custody, with credit for any time served.

In re marriage of Justice and Crum, No. 151121695, *aff'd in part, rev'd in part*, 265 Or. App. 635 (2014). After a bench trial, I ordered the dissolution of marriage of the parties. I declined to award transitional support, ordered husband to pay maintenance support of $300 per month for 18 months and child support of $1,056 per month, and I denied wife's motion for a new trial. On appeal, the Court of Appeals affirmed my denial of wife's motion for a new trial and award of child support, but the Court held that I erred in denying transitional support because I did not explain on the record the specific factors outlined in the statute. The Court of Appeals remanded for reconsideration.

State v. Kenny, No. 211101119, *rev'd in part, aff'd in part*, 262 Or. App. 702 (2014). A jury convicted defendant of failure to appear on a criminal citation. Defendant appealed my denial of her motion for a judgment of acquittal and for excluding evidence about why she did not appear as commanded on the written citation. The Court of Appeals affirmed my decision denying the motion for a judgment of acquittal but reversed my evidentiary ruling excluding as not relevant defendant's evidence about why she did not appear. The Court of Appeals held that evidence that defendant believed she was not required to appear, despite the command on the written citation, was logically relevant and should not have been excluded. The Court of Appeals reversed and remanded the case to the trial court. The state elected not to retry the case and moved to dismiss the charges.

State v. Newcomer, No. 211119621, *aff'd in part, rev'd in part*, 265 Or. App. 706 (2014). A jury convicted defendant of driving under the influence of intoxicants (DUII) and failure to appear on a criminal citation. I imposed a sentence of 24-months of bench probation and 6 days jail with credit for time served, considered served. The Court of Appeals affirmed my decisions with respect to the DUII. With respect to the failure to appear on a criminal citation, I gave a jury

instruction that explained that the state must prove defendant received notice of the mandatory appearance to prove knowledge. Defendant argued this instruction was an improper comment on the evidence. I explained that the instruction merely described that notice must be proved to establish the requisite mental state. The Court of Appeals reversed finding that the jury instruction was an improper comment on the evidence. On remand, defendant's sentence was converted to a term of bench probation with no additional imposition of jail time.

State v. Cook, No. 201122484, *rev'd*, 264 Or. App. 453 (2014). A jury convicted defendant of unlawful delivery of methamphetamine, unlawful possession of methamphetamine, interfering with a peace officer, and tampering with physical evidence. I imposed a sentence of 90 months in prison. Defendant appealed assigning as error the admission of hearsay evidence. The Court of Appeals held that officer's testimony, describing a conversation he had with defendant's girlfriend after her arrest, stating that girlfriend originally told officer that the bag containing drugs was hers and then later admitting that it was defendant's, was hearsay, and admission of officer's hearsay testimony was not harmless. The Court of Appeals reversed and remanded for resentencing on the remaining conviction. The parties reached a plea agreement in which defendant pleaded guilty to all the criminal counts for which the jury previously found him guilty, and I imposed the stipulated term of 70 months in prison.

Rucker v. Rucker, No. 160821176, *aff'd in part, rev'd in part*, 257 Or. App. 544 (2013). After a bench trial on an action to recover on a promissory note by distributive beneficiaries, I entered general judgment in favor of debtors. The Court of Appeals affirmed in part and reversed in part, holding that the parties' clear intent to enter into a substituted contract upon reaching a settlement agreement in mediation was reflected in their agreement but that I improperly dismissed without prejudice a claim raised in beneficiaries' original complaint but not in amended complaint, because the claims in the amended complaint would supersede all claims alleged in the original complaint. After the appellate judgment was entered, the parties resolved the dispute by executing a satisfaction of judgment.

State v. Huffman, No. 231100298, *rev'd*, 258 Or. App. 195 (2013). Defendant was convicted in the Circuit Court of unlawful possession of methamphetamine, after I denied defendant's motion to suppress evidence of methamphetamine found during a search of his backpack. A city police officer observed defendant riding a bicycle at 4:00am near city facilities that were gated shut. The police officer observed defendant to be nervous and shaking. After asking defendant if he could search his backpack, to which the defendant consented, the police officer found methamphetamine. The parties agreed that the defendant was stopped. The only issue was whether the police officer had reasonable suspicion to stop the defendant. I found that the police officer did have reasonable suspicion of criminal activity given the location and time of the stop, as well as defendant's behavior. However, the Court of Appeals reversed, holding that the police officer

lacked reasonable suspicion that defendant was engaged in criminal activity when he conducted a stop of defendant. On remand the state elected not to retry the case and moved to dismiss the charges.

State v. Barger, Nos. 200721991, 200801740, *aff'd*, 233 Or. App. 621 (2010), *aff'd in part, rev'd in part*, 349 Or. 553 (2011). A jury convicted defendant of eight counts of second-degree encouraging child sexual abuse in Case No. 200801740. In this case, the state presented evidence that defendant accessed internet web sites that displayed sexually explicit images of children on his computer monitor, giving rise to the eight counts of second-degree encouraging child sexual abuse. I denied defendant's motion for a judgment of acquittal at trial, concluding that the evidence of images displayed on the computer monitor was sufficient evidence to prove possession or control of the images. Defendant appealed, and the Court of Appeals affirmed without opinion. On review, the Oregon Supreme Court reversed, holding defendant's act of accessing internet websites that contained digital images of child sexual abuse, which access caused images to be displayed on his computer, without more, was insufficient to establish that defendant possessed or controlled digital images. The conviction was reversed and remanded with instructions to enter a judgment of acquittal with respect to Case No. 200801740. The sentence of 300 months for convictions for child sex abuse in Case No. 200721991 was affirmed. In August 2023, in accordance with *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), the convictions were vacated, the parties reached a plea agreement in which defendant pleaded guilty to the two counts of child sex abuse. The trial court imposed the stipulated sentence of 180 months in prison with credit for time served, considered served.

State v. Reed, No. 200827479, *rev'd*, 235 Or. App. 470 (2010). Following a stipulated facts trial, I found defendant guilty on one count of first-degree burglary and one count of first-degree sexual abuse. At sentencing I erroneously imposed as conditions of post-prison supervision that defendant have no contact with the victim, the family, or minor children. However, the law allows that sentencing judges may only recommend conditions of post-prison supervision. The Court of Appeals reversed and remanded the case for resentencing solely on correcting the sentence to reflect that the post-prison conditions were to be recommended rather than imposed.

Man-Data, Inc. v. B & A Automotive, Inc., No. 120819153, *rev'd*, 247 Or. App. 429 (2011). Collection agency brought action against sureties to collect unpaid legal fees. Following a bench trial, I entered judgments in favor of plaintiff awarding $7,512 in unpaid fees, and $5,023 in prejudgment interest. Because the corporate defendant was in default and the amounts awarded were no longer disputable against the corporate defendant, I disallowed individual surety defendants to challenge the amounts owing to plaintiff. On appeal, the Court of Appeals held that the entry of default judgment against corporate defendant for unpaid legal fees did not preclude individual defendants, as secondary obligors or sureties, from challenging the amount of the fees charged; and sureties' offer of

proof as to the reasonableness of legal fees charged was not required to preserve their claim. The Court of Appeals reversed and remanded the case to the trial court. I am unable to locate records describing the disposition of the case after remand to the trial court.

State ex rel. Dept. of Human Services v. A.T., No. 05490J, *rev'd*, 223 Or. App. 574 (2008). After a bench trial, I denied state's petition to terminate father's parental rights. Detailed evidence at trial established that while father had a significantly problematic history, including drug addiction and a criminal history, I also found he had made significant improvements in his life such that reintegration with the child was appropriate. On *de novo* review, the Court of Appeals reversed, holding that the father engaged in conduct or was characterized by some condition seriously detrimental to child; the child's integration into father's home was improbable within a reasonable time; and that termination of father's parental rights was in child's best interest. The petition to terminate parental rights was granted.

Additionally, I was the named trial judge in the appellate opinion in *State v. Music*, Nos. 17CR46368, 17CR66767, 17CR69236, *rev'd*, 305 Or. App. 13 (2020), although I was not assigned to the case at the time of the error for which the Court of Appeals reversed. I presided over a criminal settlement conference after which defendant, who was represented by counsel during the settlement conference, agreed to a stipulated facts trial and was convicted of vehicle theft and drug related offenses in three separate criminal cases. After sentencing, defendant appealed the conviction, alleging error by a previously assigned trial judge's denial of defendant's request to represent himself. The Court of Appeals found that defendant's invocation of right to self-representation was unambiguous and it was error for the prior trial court to delay its inquiry into defendant's invocation of right of self-representation. Because I presided over the stipulated facts trial and sentencing, I was the named trial judge in the opinion.

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

As a U.S. Magistrate Judge, I have issued more than 1,000 orders, findings and recommendations, opinions, and memorandum orders. Many of these are routine, and approximately 200 rulings involve substantive factual or legal analysis. Of these rulings, approximately 30 percent are available on Lexis and Westlaw, and the remaining 70 percent are stored in the electronic case management system maintained by the United States District Court for the District of Oregon.

As an Oregon State Circuit Court Judge, the vast majority of my decisions were issued from the bench in open court and recorded verbatim either with the court's audio record or in the reporter's transcript. I can recall having written two or three unpublished opinions. The court does not maintain a readily accessible database

of my written decisions, but they would be stored in the court's case management system.

As a member of the Workers' Compensation Board, all my opinions were appellate opinions decided as a panel or en banc, and all opinions were published.

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.

I make recusal decisions in accordance with the Code of Conduct for United States Judges and 28 U.S.C. § 455. In my service as a United States Magistrate Judge I do not recall having been asked by a litigant or attorney to recuse myself. I have recused myself sua sponte on one occasion in which our court's internal conflict checking system flagged a case in which a named party was also a security I owned. The party was Airbnb, Inc., and the case was *Daizovi v. Airbnb, Inc., et al.*, Case No. 6:23-cv-00105-AA (D. Or.).

In state court there was a blind recusal process by which litigants or attorneys would

notify the presiding judge of their intent to recuse a judge. Many judges, including me, elected not to be notified of such requests to maintain anonymity and increase the appearance of impartiality. Once a party communicated to the presiding judge their intent to recuse a judge, the presiding judge would reassign the case to another judge. Because of the informal manner in which cases were reassigned, I am not aware of any specific case in which a party requested the case be assigned to a judge other than me. On occasion, I would later learn that a party requested reassignment. I estimate that I learned of such reassignments five times during my service in state court, but I have no record or recollection of the specific matters.

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.

In 2003, Oregon Governor Theodore Kulongoski nominated me to serve on the Oregon Workers' Compensation Board. The Oregon Senate confirmed my nomination. I served as a quasi-judicial appellate decision maker and conducted *de novo* review of the opinions of workers' compensation administrative law judges. In 2007, I resigned from the Board after being appointed to the Oregon State Circuit Court.

In 1997, the Eugene City Council appointed me to serve on the City of Eugene Human Rights Commission after I applied for, and was interviewed for, the commissioner position. I served until 1998 after I resigned due to my employment obligations.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

In 2014 and 2008,I was involved in my own campaign as a candidate for the Lane County Circuit Court. In 2012, I also publicly endorsed the judicial campaign of Lane County Circuit Court Judge Jay McAlpin.

In 1997, I was appointed Precinct Person for the Democratic Party of Lane County.

In 1996, I hosted a house party and helped distribute campaign materials in support of Ballot Measure 37, which would have expanded the Oregon Bottle Bill.

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;

1997
Law Offices of Mustafa T. Kasubhai, PC
1600 Executive Parkway, Suite 110
Eugene, Oregon 97401

2000 – 2003
Law Offices of Mustafa T. Kasubhai, PC
132 East Broadway
Eugene, Oregon 97401

2000 – 2003
Law Offices of Mustafa T. Kasubhai, PC
409 Pine Street
Klamath Falls, Oregon 97601

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;

1997 – 1998
Lane County Legal Aid
101 East Broadway
Eugene, Oregon 97401
Landlord-Tenant Mediation Coordinator
(This was a grant-funded contract with Legal Aid)

1997 – 1998
Law Offices of Rasmussen, Tyler & Mundorff
1600 Executive Parkway, Suite 110
Eugene, Oregon 97401

Associate

1998 – 2000
Law Offices of Kasubhai & Sanchez
132 East Broadway
Eugene, Oregon 97401
Partner

2003 – 2007
Oregon Workers' Compensation Board
2601 25th Street Southeast, Salem, Oregon 97302
Workers' Compensation Board Member

2007 – 2018
Oregon Judicial Department
125 East 8th Avenue, Eugene, Oregon 97401
State Circuit Court Judge

2018 – present
United States District Court for the District of Oregon
405 East 8th Avenue, Eugene, Oregon 97401
United States Magistrate Judge

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

I coordinated a mediation program during the period 1997 to 1998, but I did not serve as a mediator or arbitrator for that program. I have not served as a mediator or arbitrator in alternative dispute resolution proceedings outside of my judicial service.

b. Describe:

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

In 1997, after passing the bar examination, I rented office space from a local law firm and started my solo practice. I began my practice with contract work from other attorneys, providing legal services in family law matters for modest means clients, and taking referrals from other law firms for personal injury claims.

In late 1997, I joined the law firm from which I was renting space, and I began my extensive practice before the Oregon Workers' Compensation Board (WCB) representing injured workers. My practice included

litigation before WCB administrative law judges in contested case hearings involving compensability of work-related injuries. I also represented my clients on *de novo* appeals to the WCB and before the Oregon Court of Appeals. I continued this specialized area of practice when I formed the firm of Kasubhai & Sanchez in 1998, when I returned to solo practice in 2000, and until I left private practice in 2003 to continue my legal career in public service on the WCB.

My practice also included representing plaintiffs in civil cases involving personal injury. Many of my workers' compensation clients often had third-party personal injury claims for which I served as their lawyer. I developed a personal injury practice representing people in tort claims relating to, among other things, traffic accidents, products liability, and wrongful death. My practice also involved representing people in employment discrimination claims often relating to retaliation for having a workers' compensation claim.

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

The majority of my clients were people who worked in heavy manual labor, truck drivers, millworkers, loggers, and office workers. Most of my clients lived and worked in rural Oregon towns where it was difficult for them to travel to larger towns to find legal counsel. Because I also kept an office in Klamath Falls, Oregon (180 miles from my office in Eugene, Oregon), I drove to Klamath Falls weekly so I could meet with clients in person. I specialized in two areas of law – representing injured workers in workers' compensation cases and representing people in personal injury claims.

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

As a lawyer, most of my practice involved litigation representing injured workers in administrative law proceedings before administrative law judges and on appeal to the Oregon Workers' Compensation Board. I also represented plaintiffs in civil cases in state court. I had four cases filed in federal court.

i. Indicate the percentage of your practice in:

1. federal courts: <1%
2. state courts of record: 10%
3. other courts: 0%
4. administrative agencies: 89%

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 do not have a specific count for the number of bench trials before administrative law judges, but I estimate that they number over 100 cases. I tried approximately 10 civil cases to a jury in state court. I was sole counsel in all cases except one in which I had co-counsel.

i. What percentage of these trials were:
   1. jury: 10%
   2. non-jury: 90%

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 did not practice 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. *In the Matter of the Compensation of Reynolds, Claimant*, 55 Van Natta 2495, 2003 WL 21997323 (2003)

From 2002 to 2003, I represented an injured worker in a workers' compensation claim for coverage of bilateral carpal tunnel syndrome as an occupational disease. The disease was also potentially caused by working for two different employers with symptoms developing as early as 1991. This case involved developing complex medical evidence on

causation of the occupational disease associated with an extended period of work-related exposures across two separate employers.

In this case, the more recent employer argued that the injured worker's condition was preexisting and that, under Oregon law, he was required to prove that recent work activities were the major contributing cause of a combined condition and a pathological worsening of the carpal tunnel syndrome.

I successfully argued before the ALJ and the WCB, in accordance with appellate caselaw, that because there were no "preexisting" conditions as explained in the medical evidence, both employers' work was the major contributing cause of the injured workers' disease and responsibility for providing medical benefits rested with the more recent employer. As a result my client was awarded compensation and medical treatment for his condition. I handled all stages of litigation including developing the medical evidence, examining and cross-examining witnesses, and presenting opening statement and closing argument during the single-day bench trial. I also submitted briefing on appeal to the Workers' Compensation Board.

Administrative Law Judge
ALJ Peterson (I am unable to locate the ALJ's full name)

Workers' Compensation Board
Board Member Frank Biehl
Board Member Vera Langer

Counsel for Defendant State Accident Insurance Fund
James Northrop (retired)

Counsel for Defendant American International Group (AIG)
Hoffman Hart & Wagner (I am unable to locate attorney of record)
1000 Southwest Broadway, 20th Floor
Portland, OR 97205
(503) 222-4499

2. *In the Matter of the Compensation of Miranda, Claimant*, 55 Van Natta 784, 2003 WL 21055075 (2003)

From 2001 to 2003, I represented an injured worker in a claim involving multiple injuries to his low back, including disk herniations at multiple levels. His injuries related back to 1987. I assisted Mr. Miranda in securing benefits arising out of a somewhat obscure area of workers' compensation benefits called "Own Motion Jurisdiction" where the Workers' Compensation Board ("WCB") may determine eligibility for disability benefits stemming from old injuries. In this case I helped Mr. Miranda in filing his claims and in navigating the administrative procedures relating to Own Motion Jurisdiction. The insurer subsequently closed the claim, and I argued that Mr. Miranda was entitled to a reexamination of disability benefits.

The WCB reviewed the case under its Own Motion Jurisdiction without first referring the matter to an administrative law judge. In a detailed opinion the Board agreed with me that Mr. Miranda was entitled to an evaluation by a medical arbiter to determine his permanent disability. After additional medical findings of disability, the Board awarded Mr. Miranda additional permanent disability benefits. As sole counsel, I handled all aspects of the litigation. In this case, that included all briefing before the WCB.

Workers' Compensation Board
Board Member Frank Biehl
Board Member Maureen Bock
Board Member Vera Langer
Board Member Greig Lowell
Board Member Jodie Phillips Polich

Counsel for Defendant
State Accident Insurance Fund (I am unable to locate attorney of record)
400 High Street Southeast
Salem, OR 97312
(503) 373-8000

3. *Benjamin v. Walmart*, Lane County Case No. 16-98-19033, *decision on appeal*, 185 Or. App. 444 (2002)

From 1997 to 2002, I represented plaintiff, Ms. Benjamin, and served as co-counsel. This case involved claims of products liability and wrongful death relating to the defective design of a propane heater that was used inside a tent and caused the death of plaintiff's father from carbon monoxide poisoning.

The case involved extensive discovery, development of expert analysis and testimony as well as the presentation of economic damages evidence. I was involved in depositions of witnesses, document discovery, briefing and arguing in opposition to defendant's motion for summary judgment, preparing witnesses for trial, and conducting direct and cross-examination of witnesses at trial. After an eight-day trial, the jury found for plaintiff, and the Oregon Court of Appeals affirmed the judgment on appeal.

State Circuit Court Judge
The Honorable Lauren Holland (retired)

Co-Counsel
Mark Stageberg
5101 Thimsen Avenue, Suite 20
Minnetonka, MN 55345
(952) 470-5242

Counsel for Defendant

Jonathan M. Hoffman
MB Law Group LLP
117 Southwest Taylor Street, Suite 200
Portland, OR 97204
(503) 220-4277

4. *Yon et al. v. Aqua Glass*, Klamath County Case No. (Unable to locate case number)

From 1999 to 2002, I represented Mr. Yon, Mr. Harden and Mr. Skellham in three separate cases that were eventually consolidated for trial because the allegations of negligence by defendant were similar. The plaintiffs worked as truck drivers responsible for transporting heavy fiberglass shower units across the country. They were also responsible for unloading the units at the destination points. They were injured in separate incidents by units that shifted during transportation and that fell on each of them. I was sole trial counsel. I took depositions and defended witness depositions, coordinated expert witness testimony, prepared witnesses for trial, selected a jury, conducted direct and cross-examination of witnesses at trial, and presented an opening statement and closing argument. The negligence claims proceeded to a six-day trial in 2002. After the jury retired to deliberate, the parties reached a settlement of the claims.

State Circuit Court Judge
The Honorable Roger Isaacson (retired)

Counsel for Defendant
Paul Silver (retired)

5. *In the Matter of the Compensation of Bland, Claimant*, 54 Van Natta 1177, 2002 WL 1884014 (2002)

From 2000 to 2002, I represented an injured worker who was diagnosed with carpal tunnel syndrome resulting from her employment. She filed a workers' compensation claim for the carpal tunnel syndrome, but the claim was denied. I represented her on her appeal of the denial before an administrative law judge (ALJ) and the Workers' Compensation Board. This case involved complex medical issues relating to an earlier predisposing condition. Because the medical condition was characterized as an occupational disease rather than as an acute injury, proving medical causation required considerable development of the medical record. Additionally, because occupational disease claims can involve uncertain onset times, I also had to develop the medical record sufficient to establish the timeliness of the claim for benefits.

Prior to the single-day bench trial, I was responsible for coordinating and developing the medical evidence for its presentation at trial. I also handled all other stages of litigation, including examining and cross-examining witnesses, delivering opening statement and closing argument, and submitting briefs on the appeal before the Workers' Compensation Board. The ALJ concluded the occupational disease claim was compensable and awarded my client benefits. On appeal, the Workers' Compensation Board affirmed the ALJ's

decision.

Administrative Law Judge
ALJ Phillip Mongrain

Workers' Compensation Board Members
Board Member Jodie Phillips Polich
Board Member Vera Langer

Counsel for Defendant
Adam Stamper
717 Murphy Road
Medford, OR 97504
(503) 373-8000

6. *Liberty Northwest Ins. Corp. v. Nichols*, 186 Or. App. 664 (2002)

From 2000 to 2002, I represented an injured worker who cracked his tooth on an employer-supplied snack while he was preparing a product order for delivery. The employer denied the claim for coverage of the injury arguing that the cracked tooth did not arise out of the course and scope of his employment. The case was not medically complex, but rather it involved the presentation of evidence and development of a record that would assist the decision makers in evaluating whether the injury arose out of the course and scope of employment.

The ALJ, the Workers' Compensation Board, and the Oregon Court of Appeals found that an employer-supplied snack that caused injury while the employee was conducting his work-related duties had a sufficient nexus to his employment, which made my client's injury compensable. I handled all stages of litigation for the case, including developing the record, presenting an opening statement and closing argument, and examining and cross-examining witnesses during the single-day bench trial. I also briefed and argued the case before both the Workers' Compensation Board and the Oregon Court of Appeals.

Administrative Law Judge
After searching Westlaw and Lexis, I am unable to locate any information identifying the ALJ in this case.

Workers' Compensation Board Members
After searching Westlaw and Lexis, I am unable to locate the Workers' Compensation Board opinion identifying the Board Members in this case.

Oregon Court of Appeals
The Honorable Walt Edmonds
The Honorable David Schuman
The Honorable Rives Kistler

Counsel for Defendant
David O. Wilson (retired)

7. *McIntosh v. Aqua Glass*, Klamath County Case No. (Unable to locate case number)

From 1998 to 2001, I represented Mr. McIntosh, who worked as a truck driver responsible for transporting heavy fiberglass shower units across the country and unloading the units at the destination points. He injured his back when attempting to unload shower units that had shifted during transport. The complaint alleged that defendant negligently loaded and secured the heavy units, causing the units to shift during transport and causing Mr. McIntosh's injury during the unloading process.

I was sole counsel. I took depositions and defended witness depositions, coordinated expert witness testimony, prepared witnesses for trial, selected a jury, conducted direct and cross-examination of witnesses at trial, and presented an opening statement and closing argument. The negligence claims proceeded to trial in 2001, and the jury returned a defense verdict.

State Circuit Court Judge
The Honorable Karla Kneips (retired)

Counsel for Defendant
Paul Silver (retired)

8. *Columbia Forest Products v. Woolner*, 177 Or. App. 639 (2001)

From 1998 to 2001, I represented Claimant Woolner, who injured her neck and shoulder while at work. My client's claim for workers' compensation for the injury had initially been accepted, but the employer later denied coverage for treatment. This litigation focused first on appropriate claim construction; that is, whether the employer was legally entitled to deny benefits given the language in its written denial of benefits. The litigation also required the development of medical evidence involving medical causation in the context of other physical predispositions.

The ALJ found that the employer had appropriately denied the claim for benefits through its claim language; the Workers' Compensation Board reversed, finding that the employer had not denied the claim appropriately. The Court of Appeals reversed and remanded the case, concluding, as did the ALJ, that the employer's claim denial was satisfactorily constructed given the state of the medical evidence. On remand to the Workers' Compensation Board, the majority of the Board, with two board members dissenting, upheld the ALJ's previous decision affirming the employer's denial of my client's workers' compensation benefits. I handled all aspects of litigation, including development of the medical record, opening statement and closing argument, examination and cross-examination of witnesses, and all briefing and argument before the Workers' Compensation Board and Oregon Court of Appeals.

Administrative Law Judge
ALJ Stephen Brown

Workers' Compensation Board
Board Member Greig Lowell
Board Member Vera Langer
Board Member Maureen Bock
Board Member Jodie Phillips Polich
Board Member Frank Biehl

Oregon Court of Appeals
The Honorable Jack Landau
The Honorable David Schuman
The Honorable David Brewer

Counsel for Defendant
Karen O'Kasey
Hart Wagner LLP
1000 Southwest Broadway, Suite 2000
Portland, OR 97205
(503) 222-4499

9. *Jeld-Wen, Inc. v. Molena*, 166 Or. App. 396 (2000)

From 1998 to 2000, I represented an injured worker employed in a plywood mill in Klamath Falls, Oregon. She worked with glues, alcohols, and other chemicals. She suffered respiratory symptoms from her exposure to these substances and required medical treatment. The employer denied her claim for coverage of the injury under an occupational disease rubric that required a higher standard of medical evidence than in acute injury claims, especially if an employee had predisposing conditions.

I argued that the exposure, based on the facts presented at the single-day bench trial, was in fact an acute injury rather than an occupational disease, even though exposures to chemicals are often analyzed as an occupational disease. The ALJ, Workers' Compensation Board, and the Oregon Court of Appeals all found that the case, as framed and presented at trial, constituted an acute injury that should be appropriately analyzed as such. The employer was ordered to accept the claim and provide medical benefits. I handled all stages of litigation, including opening statement and closing argument, examination and cross-examination of witnesses, and development of the medical evidence. I also briefed and argued the matter before the Workers' Compensation Board and the Oregon Court of Appeals.

Administrative Law Judge
ALJ Phillip Mongrain

Workers' Compensation Board

Board Member Frank Biehl
Board Member James Moller

Oregon Court of Appeals
The Honorable Walt Edmonds
The Honorable Rex Armstrong
The Honorable David Schuman

Counsel for Defendant
Travis Terrall
30250 Southwest Parkway Avenue, Suite 2
Portland, OR 97070
(503) 691-2700

10. *In the Matter of the Compensation of Shay, Claimant*, 52 Van Natta 2020, 2000 WL 1763497 (2000)

From 1999 to 2000, I represented homeowners who operated a small ranching operation in Klamath Falls, Oregon. A part-time employee at the ranch alleged a work-related injury and filed a workers' compensation claim. The Oregon Department of Consumer and Business Services ("DCBS") found the homeowners to be non-complying employers ("NCE") because they had not previously obtained workers' compensation insurance and DCBS alleged that the homeowners were required to have workers' compensation coverage.

This case involved complex issues of coverage and jurisdiction. My client prevailed before the ALJ. On claimant's appeal before the WCB, the homeowners were again found not to be NCE, and thus my clients avoided significant financial exposure. I handled all stages of litigation including the preservation and limitation of issues before the ALJ during the single-day bench trial, the examination and cross-examination of witnesses, and the presentation of opening statement and closing argument. I also submitted briefing on appeal to the Workers' Compensation Board.

Administrative Law Judge
ALJ Stephen Brown

Workers' Compensation Board
Board Member Frank Biehl
Board Member Sandra Haynes

Counsel for Plaintiff
Allison Tyler (no longer practicing in Oregon, and I am unable to locate her current contact information)

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 serving on the Lane County Circuit Court between 2007 and 2018, I presided over the court's drug court docket as the back-up judge. I would conduct status conferences involving defendants on the drug court docket, their defense counsel, the district attorney's office, and probation office. The stakeholders and I would coordinate efforts to support defendants' treatment and recovery while holding them accountable in a court setting.

As a U.S. Magistrate Judge, I preside over the district court's Court Assisted Pretrial Services (CAPS) program in the Eugene Division. CAPS participants are pre-trial defendants who are considered high-risk, whose charged crimes do not involve violence against persons, and where a rigorous plan for pre-trial supervision and court oversight can be satisfactorily constructed. Once I admit a CAPS defendant to the program, I will order pre-trial release requiring frequent and regular status conferences with the court so I can ensure compliance with release conditions, treatment, and recovery. The objective is to hold defendants accountable in a setting similar to a drug court program.

One of the highlights of my public service career has been the opportunity to work with young people, law students, and new lawyers in supporting their exploration in legal careers and public service. I frequently host middle school, high school, and college students at the courthouse to share my commitment to our legal system and inspire them about its role in a healthy democracy. Throughout my judicial career I have regularly recruited law student externs. Externs help with managing trials, conducting legal research, and writing memoranda and draft opinions. I also spend time in chambers discussing with students their own career paths and how to successfully achieve their goals. Additionally, I mentor new lawyers throughout Oregon hoping to inspire them to stay in Oregon and help create an inclusive legal profession committed to access to justice.

While I have not performed lobbying activities and I have never been registered as a lobbyist, I was at one point involved in the Oregon State Bar's work on legislation. In 2007, I testified on behalf of the Procedure and Practice Committee of the Oregon State Bar at hearings on three bills before the Oregon Senate Judiciary Committee (Oregon State Legislature). In 2008 and 2009, I served as a legislation contact person on procedure and practice issues for the Oregon State Bar.

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.

Litigation Lab, University of Oregon School of Law, Summer term, 2021 to present. This is a summer semester course on pre-trial litigation, which I teach with lectures and practical exercises. The class culminates with students arguing a motion for summary judgment. Summer 2023 syllabus supplied.

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

    None.

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

    The only outside employment that I would plan to pursue during my service with the court, assuming it would be consistent with my judicial obligations, would be teaching the Litigation Lab at the University of Oregon School of Law.

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.

        The District of Oregon, where I currently serve as a magistrate judge, maintains an automated conflict checking system that precludes cases with attorneys or parties on the conflict list from being assigned to the identified judge. On my list I

include my spouse; any spouse/partner of a law clerk, who is an attorney; and any company in which an immediate family member or I have a financial interest. I am not aware of any other family member or other persons, parties, categories of litigation, or financial arrangements that are likely to present potential conflicts-of-interests if I am confirmed to the position to which I have been nominated.

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 United States District Judge, I would continue to resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455, other relevant ethical canons and rules, and all applicable policies and procedures of the United States Courts.

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

During my time in private practice, I volunteered for a senior legal services program where I would advise seniors with certain legal issues. I would hold hours for approximately 1 to 2 hours a month, and I did this for about one year. I also volunteered for a "teen court" program where I would preside as a judge in a restorative and peer justice program. This involved 1 to 2 hours per month. I also did this work for about one year.

Since my judicial and quasi-judicial public service began in 2003, my ability to take on direct pro bono representations has been restricted. I have sought to serve my community in other ways, including by mentoring students and lawyers through the Oregon Minority Lawyers Association's mentorship program, the Oregon Asian Pacific American Association's mentorship program, and the Lane County Bar Association's mentorship program.

26. **Selection Process**:

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

On March 23, 2023, I submitted an application to Senators Ron Wyden and Jeff Merkley regarding a position on the United States District Court for the District of Oregon. On May 13, 2023, I interviewed with the Judicial Selection Commission established by Senators Wyden and Merkley. On June 12, 2023, I interviewed with attorneys from the White House Counsel's Office. Since June 24, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 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
Judge Mustafa Taher Kasubhai Nominee to the United States District Court for the District of Oregon

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 strongly disagree with that statement. In my roles as a U.S. Magistrate Judge for over 5 years, a judge on the Oregon State Circuit Court for 11 years, and a neutral appellate adjudicator for 4 years, I have faithfully and impartially applied precedent of the United States Supreme Court, the Ninth Circuit, and state appellate courts. My record of public service in the judiciary reflects my commitment to the rule of law, and if I am fortunate to be confirmed, I will continue to faithfully defend the U.S. Constitution, our country's laws, and all binding precedent.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's 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, and I absolutely disagree with its sentiment. Trial courts are obliged to follow all binding precedent and to do so faithfully. My record in judicial public service reflects that abiding obligation. I will continue to follow all binding precedent should I be confirmed to serve as a district judge.

3. **Your "courtroom rules" state that "[p]arties and counsel are instructed to address each other in all written documents and court proceedings by those previously identified pronouns and honorifics."**

   a. **If a party or counsel in your courtroom states that their pronouns are "ze/zir/zirs" or "fae/faer/faers"—do your court rules require other parties and counsel to use those "pronouns" when referring to them? Please provide a yes or no answer.**

      Response: As I testified during my hearing, my courtroom practices are designed to ensure that all parties, counsel, jurors, witnesses, courtroom staff, and public observers are treated with respect and dignity. As such, I instruct that "attorneys and parties should conduct themselves with decorum and manners." These and other practices I have adopted are consistent with Canon 3(A)(3) of the Code of Conduct for the United States Judges which provides that "a judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in

an official capacity. A judge should require similar conduct by those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process." No party or attorney who has appeared before me has declined to address another party or attorney by their identified pronouns. If such an issue arose in my courtroom, I would address that issue consistent with my obligations to accord the persons before me the full right to be heard and to dispose of matters promptly, efficiently, and fairly while also affording full and complete respect for the First Amendment rights of every person appearing before the court.

I have served for 16 years on the state and federal courts and as a neutral appellate decision maker for 4 years on the Oregon Workers' Compensation Board. I have presided over 5,000 matters in my judicial career, and I have issued over 400 written opinions as a United States Magistrate Judge. My judicial opinions have been upheld over ninety-nine percent of the time. In these 20 years I have faithfully fulfilled my oath to defend our Constitution and all state and federal laws, without regard to the background of the attorneys and litigants. My record reflects that commitment, and I will continue to steadfastly apply the law to the facts in all cases, and I will faithfully apply all binding precedent of the Ninth Circuit and Supreme Court.

Last year the Oregon State Bar recognized my judicial service by awarding me with the Wallace P. Carson Jr. Award for Judicial Excellence. The award recognizes service to the law and the profession. The Oregon State Bar notified me that it is conferring on me its annual Judge John Acosta Professionalism Award. In this District Court nomination process, the American Bar Association unanimously found me well-qualified. I point to these recognitions as evidence that the Oregon legal community trusts my judicial service. My work to find ways in my courtroom to respectfully acknowledge all parties has been consistent with the ideals of ensuring equal access to our courts, and it does not affect my legal decision making.

b. Could a party or counsel be sanctioned for failing to refer to an opposing counsel or litigant by their declared pronoun? Please provide a yes or no answer.

Response: Please see my response to Question 3a.

4. In 2021, while you were a sitting federal magistrate judge, you wrote an article where you said: "I committed to begin every civil hearing, status conference, and jury selection with an introduction that invited attorneys or potential jurors to introduce themselves and provide their pronouns so I could be sure to address them respectfully and appropriately. Lawyers have been quite responsive, jurors not so much." (emphasis added)

a. Why do you think jurors are less responsive to your "invitation" to announce their pronouns than attorneys?

Response: I have not closely studied why some who have appeared before me have been more responsive to the invitation to introduce themselves and provide their honorifics than others. Generally, I have surmised that some who come to my courtroom have never been invited to provide their honorifics, while others have regularly been invited to do so.

b. As a judge, you wield considerable coercive power over attorneys whose livelihoods depend on repeated appearance before you. Do you think this coercive power bears on attorney responsiveness to your "invitation" to announce pronouns?

Response: No. Some attorneys introduce themselves with their honorifics, and some do not. I do not force anyone to introduce themselves if they have chosen not to do so.

c. Do you think it is appropriate for a federal judge to use the power of their office to promote controversial views about gender ideology?

Response: I am committed to ensuring access to the courts for everybody. I try to do this by ensuring a civil and respectful environment in which everybody, regardless of their background, has the best chance to present their case to me.

5. In your article *Destabilizing Power in Rape: Why Consent Theory in Rape Law Is Turned on Its Head*, you reference Professor MacKinnon's view that sexuality is a "pervasive and socially constructed dynamic that systematically oppresses women."

a. What does it mean to say that sexuality is "socially constructed"?

Response: In that academic article I wrote almost 30 years ago as a law student, I surveyed several different theories related to rape law and issues including sexual relationships, consent, force, and resistance. The article traced these issues in an attempt to explain, for example, the difficulty prosecutors faced in prosecuting rape charges under the laws I surveyed at the time, which required evidence of physical resistance and force and regarded a victim's non-consent in the form of saying "No" to sexual contact as not enough. Within that context, I included a summary of some of Professor MacKinnon's writings, among many other theorists and philosophers. As I recall Professor MacKinnon's work nearly 30 years after I reviewed her writings, it was her opinion that sexuality was constructed through social relationships and institutions. The quoted language reflects the views of the professors whose theories I cited; the language did not, and does not, reflect my own views.

b. Is gender a social construct?

Response: I am not an expert in this area, and I generally leave such questions to social scientists, academics, religious leaders, and others to consider. To the extent that this issue may come before me as a judge, it would not be fair to litigants to speculate or suggest that I have prejudged the issue. If a case came before me in which this issue would need to be answered, I would work hard to evaluate the admissible evidence, apply all relevant law to those facts, and abide by all binding precedent from the Ninth Circuit and Supreme Court.

c. Is sex a social construct?

Response: I am not an expert in this area, and I generally leave such questions to social scientists, academics, religious leaders, and others to consider. To the extent that this issue may come before me as a judge, it would not be fair to litigants to speculate or suggest that I have prejudged the issue. If a case came before me in which this issue would need to be answered, I would work hard to evaluate the admissible evidence, apply all relevant law to those facts, and abide by all binding precedent from the Ninth Circuit and Supreme Court.

6. In the same article, you cite Professor MacKinnon's "illuminat[ing]" theory that "sexuality itself is a power web in which heterosexual relations *per se* are infused with violence and control."

Response: For clarity, the article does not describe MacKinnon's work as "illuminating." Rather, the article notes "Professor MacKinnon's theory behind the development of the power web model illuminates many questions…" The verb "illuminates" is a synonym for "explains." I did not personally subscribe to Professor MacKinnon's theory or the theories of any of the many writers whose work I described. The quoted language reflects the views of the professors' whose theories I cited; the language did not, and does not, reflect my own views.

a. Please define the term "heterosexual."

Response: Black's Law Dictionary (11th ed. 2019) defines "heterosexual" as "Of, relating to, or characterized by sexual desire for a person of the opposite sex…Of or related to sexual intercourse involving people of different sexes."

b. Please explain the meaning of this statement?

Response: The article I wrote almost 30 years ago as a law student surveyed many philosophers and theorists, including Plato, Aristotle, Locke, Hobbes, Rousseau, and also MacKinnon, Brownmiller and others. As I recall Professor MacKinnon's work nearly 30 years after I reviewed her writings, it was her opinion that sexuality was constructed through social relationships and institutions. I did not personally subscribe to Professor MacKinnon's theory or the theories of any of the many writers whose work I described. The quoted language reflects the views of the professors' whose theories I cited; the language did not, and does not, reflect my own views.

c. Do you now, or have you ever, believed that "heterosexual relations *per se* are infused with violence and control?"

Response: No.

7. In the same article, you wrote "Professor Brownmiller's assertion that rape is violence is well-reasoned, but its broadness decontextualizes male domination in everyday life." Please explain the meaning of this statement.

Response: The article I wrote almost 30 years ago as a law student surveyed many philosophers and theorists, including Plato, Aristotle, Locke, Hobbes, Rousseau, and also MacKinnon, Brownmiller and others. As I recall, when I wrote this article almost 30 years ago as a law student, I described Professor Brownmiller's work on rape as violence as influential, but found it did not explore the issue of consent, what consent meant in the context of sexual relationships, and particularly how the law defined consent in sexual assault laws. I did not personally subscribe to Professor Brownmiller's theory or the theories of any of the many writers whose work I described. The quoted language reflects the views of the professors' whose theories I cited; the language did not, and does not, reflect my own views.

8. In the same article, you cite Professor MacKinnon's belief that "sexuality is to feminism what work is to Marxism." Please explain the meaning of this statement.

Response: The article I wrote almost 30 years ago as a law student surveyed many philosophers and theorists, including Plato, Aristotle, Locke, Hobbes, Rousseau, and also MacKinnon, Brownmiller and others. As I recall, based on my review of relevant works 30 years ago, MacKinnon compared the status of workers and the status of women under her view that both can be oppressed and treated as if they are serving the desires of others. I did not personally subscribe to Professor MacKinnon's theory or the theories of any of the many writers whose work I described. The quoted language reflects the views of the professors' whose theories I cited; the language did not, and does not, reflect my own views.

9. Please explain the Ninth Circuit's decision in *Menotti v. City of Seattle.*

Response: The Ninth Circuit in *Menotti*, considered the constitutionality of an order that restricted movement within defined boundaries in Seattle during WTO protests in 1999. The court detailed the extensive damage protesters engaged in, the injuries police officers sustained, and the risk to the safety of conference attendees. The court found that the order was content neutral and then proceeded to evaluate whether the time, place, and manner restrictions survived a constitutional challenge. The court concluded that the geographic limits were narrowly tailored to meet the significant government interest of ensuring the safety of the conference attendees and maintaining order within the affected zone.

10. Would it be reasonable for a public official to look to *Menotti* for guidance when formulating government policy?

Response: As a judge and judicial nominee it is not appropriate for me to opine on government policy making. As a judge, when cases come before me, I will rigorously evaluate the record and arguments and apply the law to those facts, and abide by all binding precedent from the Ninth Circuit and Supreme Court.

11. In *Boudjerada v. City of Eugene* you concluded that a city-wide curfew imposed in response to violence, destruction of property, and looting during the 2020 Eugene, Oregon BLM riot was unconstitutional. To reach this conclusion, you distinguished *Menotti* noting that the Eugene riots "did not involve protestors in the tens of thousands." Are you aware that, adjusted for metro-area population, the Eugene BLM protests were larger than the Seattle WTO protests at issue in *Menotti*?

Response: My opinion details the circumstances of the protest activity and my legal analysis of the time, place, and manner restrictions. As my opinion describes, the curfew in *Boudjerada* was an all city-wide curfew without limiting geographic restrictions. In *Menotti*, the order restricting movement and activity was narrowly defined. As is my practice in every case that comes before me, I carefully researched and applied all relevant precedent to the issues before me. Because this case is still pending before me, my ethical obligations preclude me from commenting beyond the four corners of my opinion as doing so could be interpreted as prejudging issues the parties may raise in the ongoing litigation.

12. In *Boudjerada* you further distinguished *Menotti*, writing "there is no indication here (as there was in *Menotti*) that the protestors on May 29-30 were significantly organizing around violent activity." In your opinion, you acknowledged that rioters on May 31 "carried 'heavy backpacks,' bottles, and were communicating via radios." Does this not suggest organization?

Response: My opinion details the circumstances of the protest activity and my legal analysis of the time, place, and manner restrictions. As is my practice in every case that comes before me, I carefully researched and applied all relevant precedent to the issues before me. Because this case is still pending before me, my ethical obligations preclude me from commenting beyond the four corners of my opinion as doing so could be interpreted as prejudging issues the parties may raise in the ongoing litigation.

13. At your hearing, you avoided answering my question when I asked if you would describe the violence and destruction in Eugene, Oregon on May 29-30 as a riot.

a. Please provide a yes or no answer. Was the violence, destruction, and looting in Eugene, Oregon on May 29-30 a riot?

Response: Throughout my written opinions in this case, I consistently used the term "protest" to describe the events. I note that the court in *Menotti* also described the activity and events as "protests" in its opinion. My opinion detailed the property damage and injuries so as not to factually minimize what happened in the city of Eugene, Oregon. Federal and state law bars violence, destruction, and looting, and as a sitting judge for the last 16 years, I have been committed to upholding the rule of law. Because this case is still pending before me, my ethical obligations preclude me from commenting beyond the four corners of my opinion as doing so could be interpreted as prejudging issues the parties may raise in the ongoing litigation.

14. Please describe the relevant law governing when a federal court may entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a state court.

Response: The statutes relating to habeas corpus on behalf of a person in custody pursuant to a state court judgment can be found generally in 28 U.S.C. §§ 2241-2254. The petitioner must first exhaust all available state remedies and must file a petition within the one-year period of limitations. 28 U.S.C. § 2244(d). The standard for determining whether relief may be granted is whether the state adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States…" 28 U.S.C. § 2254(d)(1). The Supreme Court explained that "as a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court

was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

15. Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence

Response: Habeas petitions for persons in custody pursuant to a federal court judgment are governed by 28 U.S.C. § 2255. The petitioner must file the petition within a one-year period of limitation, 28 U.S.C. § 2255(f), and the petitioner must establish that "the sentence was imposed in violation of the Constitution or laws of the United States," the "court was without jurisdiction to impose such sentence," the "sentence was in excess of the maximum authorized by law," or the sentence was "otherwise subject to collateral attack," 28 U.S.C. § 2255(a). Successive motions must be based on newly-discovered evidence that would have resulted in acquittal or on a new and previously unavailable rule of constitutional law made retroactive by the Supreme Court. 28 U.S.C. § 2255(h)

16. In your hearing, you said that you "have not praised Marxist ideas." However, in a 1994 essay published in "The Weekly Dissent," you argued in favor of "integrating" Marxist theory with that of Locke and Bentham, in order to engage in a "creative struggle" to "redefin[e] property." Did you mislead the Committee?

Response: I did not mislead the Committee. I wrote this brief, and rather inarticulate, essay for the student paper almost 30 years ago. I have read the essay several times as I prepared for my testimony, and I am unable to piece together an explanation for what I was trying to say in the essay. The content of that essay, such that any meaning might be extrapolated from it, is so far removed from my work as a lawyer, public servant, and judge for the last 27 years, and so attenuated from the things that matter in my life as a citizen and a judge, I stand by my statement that I have not praised Marxist ideas.

Let me state unequivocally as I did during my hearing: I am not, and never have been, a Marxist. I have never espoused, nor subscribed to, Marxist theories. Rather, I have been an active participant in, and beneficiary of, the American capitalist system, as is clear from my own holdings of private property and securities as detailed in the statement of net worth as provided to this Committee.

17. In the same article you wrote that "Marx was plainly disgusted with the alienation that property imposed." Please explain Marx's theory of alienation.

Response: I am not versed in Marx's theory of alienation, and I do not recall what I intended in the statements I wrote in a student newspaper 30 years ago. In my work as a judge in the

last 16 years, I have fairly and faithfully applied the law to the cases before me without reference to, or application of, any academic theory I may have encountered as a law student.

Let me state unequivocally as I did during my hearing: I am not, and never have been, a Marxist. I have never espoused, nor subscribed to, Marxist theories. Rather, I have been an active participant in, and beneficiary of, the American capitalist system, as is clear from my own holdings of private property and securities as detailed in the statement of net worth as provided to this Committee.

18. Please explain what value you believed Marx's theory of alienation could play in redefining property.

Response: I am not versed in Marx's theory of alienation, and so I am unable to respond to this question. Let me state unequivocally as I did during my hearing: I am not, and never have been, a Marxist. I have never espoused, nor subscribed to, Marxist theories. Rather, I have been an active participant in, and beneficiary of, the American capitalist system, as is clear from my own holdings of private property and securities as detailed in the statement of net worth as provided to this Committee.

19. Have you ever been a member of, or otherwise affiliated with, any organization or group that attempted to promote the theories of Karl Marx, Peter Kropotkin, or any other Marxist or Anarchist writers?

Response: No.

20. Have you ever identified your ideology as Marxist or Anarchist?

Response: No.

21. As a sitting Magistrate Judge, you made the following statement:

> **Privilege derives its power from the belief in scarcity. . . Scarcity of money, natural resources, food, and power itself. The desire to control it all drives privilege. I want to suggest to you that equity, the ideal of equity rejects this model of scarcity.**

Does this rejection of the reality of scarcity not run counter to basic economic theory?

Response: In 2020 I gave a speech about the value of diversity in our communities and why I regard it as important to consider everybody's voice and to afford everyone personal dignity. I made the point that, while people may have differential access to scarce resources

such as money, food, power, and natural resources, personal dignity is an endless resource that I strive to afford to anyone and everyone with whom I interact. As a judge, and as a proud American, I have committed to the value that no one should have more or less access to personal dignity than any other person.

I did reject the reality of scarcity. Indeed, scarcity is a key economic concept and a reality of the American economic system. My comments did not endorse an alternative economic or political model in any way whatsoever. The point I made was that there should be no scarcity when it comes to the concept of personal dignity.

The more complete quote reads "privilege derives its power from the belief in scarcity. Scarcity of money, natural resources, food, and power itself. The desire to control it all, drives privilege. Equity rejects the model of scarcity. I must be committed to the idea that your voice need not deprive me of mine. Equity also subscribes to the ideal that dignity is the foundational currency. I need not deprive another of her dignity to preserve mine."

My intent was to share the idea that dignity and respect for one another is an unlimited resource, and to set out the ways in which I strive to treat others with an abundance of dignity and respect. Let me state unequivocally as I did during my hearing: I am not, and never have been, a Marxist. I have never espoused, nor subscribed to, Marxist theories. Rather, I have been an active participant in, and beneficiary of, the American capitalist system, as is clear from my own holdings of private property and securities as detailed in the statement of net worth as provided to this Committee.

22. Please explain Marx's theory of post-scarcity.

Response: I am not versed in Marx's theory of post-scarcity. In my work as a judge in the last 16 years, I have fairly and faithfully applied the law to the cases before me without reference to, or application of, any academic theory I may have encountered as a law student. Let me state unequivocally as I did during my hearing: I am not, and never have been, a Marxist. I have never espoused, nor subscribed to, Marxist theories. Rather, I have been an active participant in, and beneficiary of, the American capitalist system, as is clear from my own holdings of private property and securities as detailed in the statement of net worth as provided to this Committee.

23. Do you agree with the following statement made by President Barack Obama: "the free market is the greatest producer of wealth in history -- it has lifted billions of people out of poverty"?

Response: I agree with the statement.

24. Please explain the facts and holding of the Supreme Court decisions in Students for Fair Admissions, Inc. v. University of North Carolina and Students for Fair Admissions Inc. v. President & Fellows of Harvard College.

Response: In this case defendants' admissions decisions considered, among other factors, an applicant's race. The Supreme Court concluded Asian-American applicants were negatively treated relative to other applicants, and that the negative treatment of race and racial stereotyping could not survive strict scrutiny. It held that Harvard's and UNC's admissions programs violated the Equal Protection Clause of the Fourteenth Amendment.

25. Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?

Response: Yes.

a. If yes, please list each job or role where you participated in hiring decisions.

Response: As a judge I have been responsible for hiring law clerks for my chambers, and I have participated in hiring decisions for Magistrate Judges. As an attorney in private practice, I was responsible for hiring staff. When I worked as a supervisor in the residence halls during college, I was responsible for hiring residence assistants.

26. Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?

Response: No.

27. Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?

Response: No.

28. Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?

Response: To the best of my knowledge, none of my employers used such preferences.

If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

Response: Not applicable. Please see my response to the first part of Question 28.

29. Under current Supreme Court and Ninth Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?

Response: The Supreme Court and the Ninth Circuit apply strict scrutiny to race-based differentiations. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023); *Mitchell v. Wash.*, 818 F.3d 436 (9th Cir. 2016).

30. Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.

Response: The Supreme Court's holding is that a law that requires a private business to engage in speech, and in this case, requiring a web-designer to design a website for a same-sex wedding when the business owner would not have done so voluntarily, amounts to compelled speech in violation of the First Amendment.

31. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional* constellation*, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."

Is this a correct statement of the law?

Response: The Supreme Court cited *Barnette* favorably in its recent decision, *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023). If confirmed as a district judge, and as I have done for the 16 years I have served as a judge, I will faithfully apply all binding precedent of the Ninth Circuit and the Supreme Court, including the *Barnette and 303 Creative decision.*

32. How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?

Response: I would faithfully apply all binding precedent of the Ninth Circuit and Supreme Court. In *Reed v. Town of Gilbert, Arizona*, 573 U.S. 155 (2015), the Supreme Court

explained that the first step is to determine if the regulation is content-neutral on its face. If it is, then the Court directs a second inquiry to determine the regulation's justification or purpose and whether it was promulgated because of a disagreement with the message to be regulated.

33. What is the standard for determining whether a statement is not protected speech under the true threats doctrine?

Response: The Supreme Court held that "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence" are Constitutionally unprotected "true threats." *Virginia v. Black*, 538 U.S. 343, 359 (2003). True threats are threats where the speaker expresses intent to explicitly cause immediate harm. *See Watts v. U.S.*, 394 U.S. 705 (1969).

34. Under Supreme Court and Ninth Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?

Response: Black's Law Dictionary (11th ed. 2019) defines a "fact" as "1. Something that actually exists; an aspect of reality … Facts include not just tangible things, actual occurrences, and relationships, but also states of mind such as intentions and the holding of opinions. 2. An actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation … 3. An evil deed; a crime."

Black's Law Dictionary (11th ed. 2019) defines "question of law" as "1. An issue to be decided by the judge, concerning the application or interpretation of the law … 2. A question that the law itself has authoritatively answered, so that the court may not answer it as a matter of discretion… 3. An issue about what the law is on a particular point; an issue in which parties argue about, and the court must decide, what the true rule of law is … 4. An issue that, although it may turn on a factual point, is reserved for the court and excluded from the jury; an issue that is exclusively within the province of the judge and not the jury…"

The appellate court will first determine whether a matter at issue is a question of fact or a question of law, or a mixed question of fact and law. If it is a question of fact, an appellate court will review under a clearly erroneous standard. If it is a question of law, it will review under a *de novo* standard. In the Ninth Circuit, mixed questions of law and fact are typically reviewed under a *de novo* standard "but depending on the nature of the inquiry involved, may be reviewed under a more deferential clearly erroneous standard." *U.S. v. Lang*, 149 F.3d 1044, 1047 (9th Cir. 1998).

35. Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?

Response: I am unaware of any statutory or case law precedent that prioritizes one purpose of sentencing over another. The factors set out in 18 U.S.C. § 3553(a), the United States Sentencing guidelines, the United States Probation Department's pre-sentencing report, sentencing memoranda, victim impact statements, and all binding precedent are the authority and resources on which I will rely in every case when determining a fair and impartial criminal sentence.

36. Please identify a Supreme Court decision from the last 50 years that you think is particularly well reasoned and explain why.

Response: As a sitting federal judge and a judicial nominee, I faithfully apply all binding precedent from the Supreme Court to the facts of the cases that come before me, and I would continue that practice if confirmed as a district judge. I do not differentiate precedents of the Supreme Court as it is my obligation to them all.

37. Please explain which Ninth Circuit or Supreme Court precedent supports your finding in *Gililland v. Southwest Oregon Community College District* that discrimination for past involvement in the pornography industry is actionable under Title IX.

Response: In the *Gilliland* case, I denied summary judgment finding there was sufficient evidence from which a jury could conclude that a defendant discriminated against the plaintiff on the basis of sex. In particular, as described in my written opinion, there was evidence in the summary judgment record that a member of the faculty told plaintiff something to the effect of "only classy women can be nurses, and you're not a classy woman." I found that a jury could conclude from that statement that plaintiff was treated differently because of her sex, and it was appropriate for a jury to decide. A jury returned a verdict for plaintiff.

38. Please identify a Ninth Circuit judicial opinion from the last 50 years that you think is particularly well reasoned and explain why.

Response: As a sitting federal judge and a judicial nominee, I faithfully apply binding precedent from the Ninth Circuit to the facts of the cases that come before me, and I would continue that practice if confirmed as a district judge. I do not differentiate precedents of the Ninth Circuit, as it is my obligation to apply them all.

39. While serving as a magistrate judge, you publicly praised Ibram X. Kendi as "an amazing historian and author" during a 2020 speech.

a. Which of Kendi's writings do you find most amazing? Please be specific.

Response: I am generally familiar with Mr. Kendi's work as he has written a number of New York Times Bestsellers. However, I have not read every book he has written, nor am I aware of every idea he has expressed. When considering Mr. Kendi generally, it was in relation to Mr. Kendi having received significant national recognition—for example, he was one of Time Magazine's 100 Most Influential People in the World, and as a national book award winner—rather than my support for any one idea Mr. Kendi has expressed.

b. Kendi is famous for authoring the following statement: "The only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination." Do you agree with this statement?

Response: No, I do not agree with those statements. I learned of these statements for the first time at the Committee hearing. My understanding of diversity and equity does not include fighting discrimination with discrimination. I am absolutely opposed to such an idea or practice. As Gandhi once said, "An eye for an eye leaves the whole world blind." I am generally familiar with Mr. Kendi's work as he has written a number of New York Times Bestsellers. However, I have not read every book he has written, nor am I aware of every idea he has expressed.

40. While serving as a federal magistrate judge, in notes prepared for a 2019 speech to the University of Oregon Law School's incoming class, you endorsed Ibram X. Kendi's belief that it "is not enough to be not a racist. Rather you must be anti-racist, anti-sexist, anti-homophobic." Do you consider yourself to be anti-racist?

Response: The term "anti-racist" means something different to different people. As I understand that term, and how I used that term in my speech, I refer to someone who is stating their position about equity and diversity in a positive framing. To me the term means someone who is in support of equity and treating people equally. My understanding of the term does not include fighting discrimination with discrimination. I am absolutely opposed to such an idea or practice. As Gandhi once said, "An eye for an eye makes the whole world blind."

41. Ibram X. Kendi has stated that you cannot be anti-racist without being anti-capitalist. Do you agree with this statement?

Response: No, I do not agree with it. Moreover, I am not familiar with this statement or the context in which it was made.

42. In the same speech notes you wrote that you would "like to push some of Ibram's ideas a bit further." Please specify which of Ibram X. Kendi's ideas you would like to push further.

Response: At the Committee hearing on October 4, 2023, I was unable to recall the statement. I have reviewed my speech notes and located the reference: I was giving a speech to incoming law students at the University of Oregon School of Law. It was not until the Committee hearing that I became aware of Mr. Kendi's statements about fighting past discrimination with future discrimination, and so I would not have referred to them during my speech to the law students or in any other speech.

Rather, in the speech I referred to Mr. Kendi's idea that when someone takes a public position on a matter it is likely that someone else will take an opposing public position. Mr. Kendi described this back-and-forth in the context of race. As my notes indicate, in my speech I said I'd like to "push" it further by applying this idea to the experiences of students and the hard choices they would face. I specifically referred to the idea that when students embark on anything worthwhile, oftentimes they may find an obstacle or an opposing force that may make them question whether they made the right choice. In my speech I gave a few examples. One example involved an attorney who, upon declaring her intent to retire, was suddenly approached with the case of a lifetime. Another example involved someone accepting a job offer out of necessity, and then, soon after, receiving a call about the job they really wanted. I took what I understood to be Mr. Kendi's idea about action and reaction, and I turned it into motivation for students to stay engaged and not second-guess their hard choices. I explained that the goal is not about getting to the finish line but simply staying in the race.

I do not condone or profess discrimination. In my work on the bench for the last 16 years, I have treated every litigant with fairness and respect. As a sitting federal judge and former state court judge, I have applied the law to the facts in an evenhanded way with a focus on abiding all applicable precedent of the Supreme Court, the Ninth Circuit, and state appellate law. In my work with students and other members of the public, I encourage people to remain engaged and to believe in our systems of government.

43. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.

Response: 18 U.S.C. § 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. It further directs that "[n]othing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

44. Is 18 U.S.C. § 1507 constitutional?

Response: If confirmed as a district judge, I will follow Ninth Circuit and Supreme Court precedent when analyzing the constitutionality of a statute. In *Cox v. Louisiana*, 379 U.S. 559, 562 (1965), the Supreme Court rejected a facial challenge to a similarly worded state statute, explaining that: "A State may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence. A narrowly drawn statute such as the one under review is obviously a safeguard both necessary and appropriate to vindicate the State's interest in assuring justice under law."

45. While serving as an Oregon state court judge, in notes you prepared for a 2013 speech to the Oregon Minority Lawyers Association, you stated "[o]f course, there is some deeper transcendent meaning to [l]ove see[s] no color, but let's be real. It's not going to happen in a pure and true way anytime soon." Please explain this statement.

Response: To the best of my recollection in the speech I gave 10 years ago, I meant that, though I believe strongly in the principle that love sees no color, I have observed that I cannot presume that everyone that I encounter follows this principle. For example, I am aware that some may see the color of my skin or hear the sound of my name and may draw presumptions before they take the time to get to know me. As a judge who has served on the state and federal courts for 16 years, I think a more apt description of how I approach each case is that the law sees no color. Every day, I strive to treat litigants fairly and to impartially apply the law to the facts before me without any bias or favor.

46. Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.

Response: I am not aware of any Ninth Circuit or Supreme Court authority that allows consideration of laws of foreign nations in interpreting a provision of the U.S. Constitution.

47. While serving as a federal magistrate judge you stated that the United States is "deeply Islamophobic."

a. Please define the term "Islamophobic."

Response: The term, as I understand it, means to have a dislike or a prejudice against Islam or Muslims.

b. Please describe precisely in what ways our nation is "deeply Islamophobic." Be as specific as possible.

Response: Although we live in a great country, I have unfortunately experienced exclusion and discrimination because of my heritage. I have also seen family members and friends who are Muslim experience discrimination over the years. For example, while a state court judge and in the courthouse, I was called sandn****r and camel jockey. In another instance, a litigant who did not agree with my ruling exclaimed something to the effect that "we don't need Muslims in this country, and someone should take him out," referring to me. Because of the credible threat, the sheriff's office posted security patrols at my home for several months. These were the kinds of experiences to which I referred in the speech you reference.

Importantly, no matter the personal instances of discrimination I have faced, I approach each and every case the same way—applying the law to the facts, faithfully abiding all relevant precedents, and treating litigants fairly.

48. Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:

a. Was *Brown v. Board of Education* correctly decided?

Response: As prior judicial nominees have noted, the legal issues presented in *Brown* are unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Brown* was correctly decided.

b. Was *Loving v. Virginia* correctly decided?

Response: As prior judicial nominees have noted, the legal issues presented in *Loving* are unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Loving* was correctly decided.

c. Was *Griswold v. Connecticut* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *Griswold* is binding precedent, and I will faithfully apply this, and all other Supreme Court authority.

d. Was *Roe v. Wade* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *Roe v. Wade*, 410 U.S. 113 (1973) was overturned *by Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2242 (2022). As a sitting judge and candidate for the District Court, I can affirm that I am duty-bound to follow Supreme Court precedent. I will faithfully apply Dobbs and all other binding authority.

e. Was *Planned Parenthood v. Casey* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), was overturned *by Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2242 (2022). As a sitting judge and candidate for the District Court, I can affirm that I am duty-bound to follow Supreme Court precedent. I will faithfully apply Dobbs and all other binding authority.

f. Was *Gonzales v. Carhart* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *Gonzales* is binding precedent, and I will faithfully apply this, and all other Supreme Court authority.

g. Was *District of Columbia v. Heller* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *Heller* is binding precedent, and I will faithfully apply this, and all other Supreme Court authority.

h. Was *McDonald v. City of Chicago* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *McDonald* is binding precedent, and I will faithfully apply this, and all other Supreme Court authority.

i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *Hosanna-Tabor* is binding precedent, and I will faithfully apply this, and all other Supreme Court authority.

j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *New York* State *Rifle & Pistol Ass'n v. Bruen* is binding precedent, and I will faithfully apply this, and all other Supreme Court authority.

k. Was *Dobbs v. Jackson Women's Health* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *Dobbs v. Jackson Women's Health* is binding precedent, and I will faithfully apply this, and all other Supreme Court authority.

l. Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *Students for Fair Admissions* is binding precedent, and I will faithfully apply this, and all other Supreme Court authority.

m. Was *303 Creative LLC v. Elenis* correctly decided?

Response: Canon 3(A) of the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court decisions. *303 Creative LLC* is binding precedent, and I will faithfully apply this, and all other Supreme Court authority.

49. 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 v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court concluded that the constitutional right to bear arms in public for self-defense is a protected individual right. In determining whether a restriction on an individual's right to bear arms is constitutional, the court must assess whether such a restriction is consistent with the nation's historical tradition of regulating firearms.

50. While serving as a federal magistrate judge you stated "[w]e have to set aside conventional ideas of proof when we are dealing with the interpersonal work of equity, diversity and inclusion." Is this an appropriate statement for a Federal Judge to make?

Response: That statement was part of a larger essay that discussed finding ways to have more constructive and productive conversations about diversity, equity and inclusion in the Oregon legal community specifically, but also in the Oregon community more broadly. The essay was published in the Oregon State Bar's monthly professional magazine. The audience was primarily Oregon attorneys. The essay does not describe a judicial decision making methodology. Because I was writing to lawyers, who clearly understand the process by which we adjudicate matters in a courtroom, I used that commonly understood process as a contrast to the way in which we might have conversations with each other interpersonally about issues of diversity, equity and inclusion outside of the courtroom. In my 16 years on the bench, I have fairly and faithfully applied the law to the facts, including with respect to standards of proof in every case that has come before me. If I am fortunate enough to be confirmed, I will continue to do so as a District Court judge.

51. While serving as a federal magistrate judge, when discussing the "interpersonal work of equity, diversity, and inclusion," you stated "[a]s a judge, I can appreciate the challenge of employing a different mode for understanding truth than that which most lawyers are accustomed to in our work." Is this an appropriate statement for a Federal Judge to make?

Response: Please see my response to Question 50.

52. While serving as a federal magistrate judge, in notes prepared for a 2018 speech to the Lane County Bar Association, you criticized Mitch McConnell for contributing to the "politicization of the judiciary" by reducing the allotted time for debate on certain judicial appointments from 30 hours to 2 hours.

a. Is this an appropriate statement for a federal judge to make?

Response: As my notes indicate, I began the speech with the statement "I am making no political statements today, here in public or anywhere for that matter. There are references to current events, and they are discussed to describe the arc of the history of judicial independence."

As part of describing several historical events that impacted and shaped the judiciary, I included that "Last week, Senate Majority Leader Mitch McConnell revised the Senate rules reducing the 30 hours allotted for debate on judicial appointments to 2 hours." The broader theme of the hour-long presentation was discussing and describing the importance of judicial independence.

b. Will you continue to make public statements about matters of public policy if confirmed to a lifetime appointment?

Response: As a federal judge and judicial nominee, I am precluded by the Code of Conduct for United States Judges from commenting on matters of public policy.

53. 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: I previously spoke with Christopher Kang about how the nominations process generally worked based on his experience working in the White House Counsel's Office.

54. 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 the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

Response: In 2021, I spoke briefly with William Harrison. He explained to me the general process for nominations.

55. 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.

56. 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.

57. 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.

58. 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 23, 2023, I submitted an application to Senators Ron Wyden and Jeff Merkley regarding a position on the United States District Court for the District of Oregon. On May 13, 2023, I interviewed with the Judicial Selection Commission established by Senators Ron Wyden and Jeff Merkley. On June 12, 2023, I interviewed with attorneys from the White House Counsel's Office. Since June 24, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2023, the President announced his intent to nominate me.

59. 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: Early in the process when Senators Wyden and Merkley were considering applications for this District Court position, I spoke with Christopher Kang briefly about his

experience with the nominations process, based on his experience working in the White House Counsel's Office.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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 or include any particular case or type of case in your questionnaire?

Response to all subparts: I spoke with attorneys from Office of Legal Policy about preparing my materials to submit to the Senate Judiciary Committee. The attorneys recommended that I include cases that reflect the breadth and depth of my legal rulings as a judge throughout my 16 years on the bench. I independently reviewed my record and included cases I determined reflected the breadth and depth of my judicial experience.

65. 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 23, 2023, I submitted an application to Senators Ron Wyden and Jeff Merkley regarding a position on the United States District Court for the District of Oregon. On May 13, 2023, I interviewed with the Judicial Selection Commission established by Senators Ron Wyden and Jeff Merkley. On June 12, 2023, I interviewed with attorneys from the White House Counsel's Office. Since June 24, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2023, the President announced his intent to nominate me.

66. Please explain, with particularity, the process whereby you answered these questions.

Response: I received these questions on October 11, 2023, conducted legal research, reviewed my files, and drafted my responses. I submitted my draft responses to the Office of Legal Policy at the Department of Justice on October 12, 2023, and I received limited feedback. I then finalized and submitted my answers.

Senate Judiciary Committee
Nominations Hearing
October 4, 2023
Questions for the Record
Senator Amy Klobuchar

Mustafa Taher Kasubhai, nominee to be U.S. District Court Judge for the District of Oregon

Since 2018, you have served as a U.S. Magistrate Judge in the U.S. District Court for the District of Oregon. In this capacity, you have been assigned more than 900 civil cases as well as many criminal matters. Additionally, prior to your service as a federal magistrate judge, you served as a State Circuit Court Judge in Lane County, Oregon from 2007 to 2018. In this capacity, you presided over more than 500 criminal and civil matters as well as appeals from administrative and municipal courts.

- **How has your experience as a federal magistrate judge and as a state trial court judge prepared you to serve as a federal district court judge?**

  Response: Over the last 16 years I have served on the state and federal benches in Oregon, I have presided over 5,000 civil and criminal matters. If confirmed to serve as a United States District Judge, I would bring to the position a breadth and depth of subject matter knowledge as well as thousands of hours of experience as a trial judge in the courtroom.

  Currently, as a United States Magistrate Judge I am assigned the same kinds of civil cases that the United States District Judges are assigned. Over the last 5 years, I have presided over a vast range of subject matters including employment discrimination claims, patent infringement litigation, complex section 1983 claims involving multiple governmental defendants and bodies, prisoner civil rights cases, social security appeals, *pro se* litigant claims, and free speech and religious freedom claims. I am currently performing the civil work I would if I were confirmed. My record reflects that I vigorously review each case fairly and impartially; that I apply the law to the facts; and that my written opinions are detailed, clear, and well-reasoned.

  When I served on the Oregon State Circuit Court, I presided over both civil and criminal matters, including over 100 criminal jury trials in my 11 years on the state bench. I have a broad base of knowledge of criminal law generally, a deep understanding of criminal procedure and evidence, extensive experience managing jury trials, and experience with considering the multiple factors in determining and imposing fair sentences.

  My many hours in the courtroom—engaging with attorneys, litigants, and the general public—have helped me develop patience and practice humility. If confirmed, I will come to the bench with an established reputation in the District of Oregon as a fair and

impartial judge—a judge who will take the time to listen to everyone's case, ask questions to fully understand the parties' positions, and then issue rulings that are clear and respectful so that litigants, win or lose, will know they were heard.

- **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: In every case, I endeavor to treat everyone with respect and dignity. To do so, prior to taking the bench for a hearing or trial, I ensure that I am prepared. I read the briefs and discuss the issues with my law clerks so that I am as fully informed on the law and facts as possible. I schedule extended time for oral arguments, so I do not rush the attorneys' presentation. I ask lots of questions with the intent to understand the parties' arguments from every conceivable angle. In this way, I get the benefit of the attorneys' expertise in the case to "stress test" my own understanding of the issues. I do this while maintaining an environment in the courtroom where the attorneys and I are engaged in a discussion. The trust I try to build with the litigants and lawyers helps me to understand the issues as well as possible. My engagement with the litigants communicates to them that I am genuinely interested in what they have to say. This develops comfort in the courtroom and with me, and this gives them the chance to deliver their best.

After arguments, I work hard to make sure I issue timely written opinions. I approach drafting opinions with a focused and consistent method so that the structure of my opinions is predictable and readable. I intentionally avoid "flair" in my written opinions out of respect for the parties who have worked hard to present their best cases. I remain aware that at least one of the parties' efforts may not lead to a win; "flair" in opinions can sometimes trivialize a parties' position, and it is unnecessary.

For years, whether I was ruling from the bench in state court or writing an opinion in District Court, I have been mindful of the image of a pilot flying a passenger plane. For the case before me, I am the pilot and the parties, attorneys, witnesses, and jurors are the passengers. It is my responsibility to not merely get them from the beginning of the case to the end but to also ensure that the experience is as turbulence-free as possible. At the journey's end, I am obliged to land the plane as gently as possible. As a pilot, if I have done my job well, the least noticeable part of the journey is that they were thousands of feet above solid ground inside a thin aluminum cylinder. As a judge, if I have done my job well—including treating people with graciousness and dignity in the courtroom and writing well-reasoned and readable opinions—the parties, attorneys, witnesses, and jurors will close out the case, get on with their lives and do so with more respect for the judiciary and the rule of law.

Senator Mike Lee
Questions for the Record
Mustafa Taher Kasubhai, Nominee to the United States District Court for the District of Oregon

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

   Response: Humility is the foundation of my judicial philosophy. Striving to practice humility in my judicial work supports my effort to treat everyone who appears in my courtroom with dignity and patience. It supports my effort to listen carefully and work hard to evaluate the facts, understand the legal arguments, and comprehend the law which I will apply to the facts. Finally, humility is the necessary support for upholding the rule of law and remaining faithful to all binding precedent.

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

   Response: The first step is to consider the text of the statute and to give the words their public meaning at the time the statute was adopted. If the text is ambiguous and there is no prior binding precedent, I would apply the principles of statutory interpretation as directed by the Ninth Circuit and Supreme Court.

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

   Response: I would first apply binding Ninth Circuit and Supreme Court precedent interpreting a constitutional provision. If no prior binding precedent exists, I would analyze the text of the provision and determine its public meaning based on historical practices and understandings as directed by the Supreme Court in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *New York State Rifle & Pistol Ass'n, Inv. v. Bruen*, 142 S. Ct. 2111 (2022).

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

   Response: The text and original meaning of a constitutional provision is of paramount importance. Please see my answer to Question 3.

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 answer to Question 2. When a statute's text is unambiguous, the plain meaning of the text is singularly relevant.

6. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: Please see my answers to Questions 2, 3, and 4. The plain meaning of a statute or constitutional provision is of paramount importance, and its meaning needs to be determined as of the time of enactment.

7. What are the constitutional requirements for standing?

Response: There are three elements to satisfy Article III standing. First, a plaintiff must show that he or she has suffered an "injury in fact" that is concrete and particularized and actual or imminent rather than hypothetical. Second, there must be a causal connection between the alleged injury and the complained of actions. Finally, the harm must be redressable by a decision in plaintiff's favor. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

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

Response: Congress is authorized with the powers identified in the U.S. Constitution, Article I, § 8. It is further authorized to make all laws that are necessary and proper to effectuate its authority.

9. 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 explained that Congress is not required to cite to its source of its authority when enacting legislation. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). If confirmed and presented with a question of Congress' authority to enact a statute, I would follow Ninth Circuit and Supreme Court precedent when evaluating whether the enactment of the law was in the scope of Congress' constitutionally established authority.

10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: The Constitution is generally one of enumerated rights. However, the Supreme Court recognized in *Washington v. Glucksberg*, 521 U.S. 702 (1997), that it also protects certain unenumerated rights through the Fifth and Fourteenth Amendments. Examples of those unenumerated rights include (but are not limited to) the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), and the right to keep one's family together, *Moore v. City of East Cleveland*, 431 U.S. 494 (1977). When a right is not expressly enumerated, the Supreme Court looks to whether a claimed individual right is deeply rooted in our nation's history and tradition and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, at 720-721.

11. What rights are protected under substantive due process?

Response: Please see my answer to Question 10.

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: I distinguish protected rights from unprotected rights based on the precedence of the Supreme Court and Ninth Circuit. The Supreme Court held in *Griswold v. Connecticut*, 381 U.S. 479 (1965), that the Constitution protected the right of marital privacy against state restrictions on contraception, and that while the Constitution does not explicitly protect a general right to privacy, the various guarantees within the Bill of Rights create zones that establish the right to privacy. The Supreme Court held in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), that the Constitution does not protect the economic rights at stake in *Lochner v. New York*. I am bound, and I will faithfully uphold all binding precedent of the Supreme Court and the Ninth Circuit.

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

Response: The Commerce Clause is found in Article I, Section 8, Clause 3, of the U.S. Constitution. It is one of Congress' enumerated powers. The clause provides that Congress shall have the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." In *U.S. v. Lopez*, 514 U.S. 549 (1995), the Supreme Court explained that Congress could regulate the use of channels of interstate commerce, the instrumentalities of interstate commerce, and activities that substantially affect or substantially relate to interstate commerce. The Court in *Lopez* imposed limits on Congress' power to legislate activities that substantially affected or substantially related to interstate

commerce, explaining that indirect effects on commerce are insufficient bases for legislative authorization under the Commerce Clause.

14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: Some of the criteria the Court has considered in determining a suspect class include whether the group has historically been discriminated against, whether the group possesses an immutable or highly visible trait, and whether the group is a discrete or insular minority. In *Graham v. Richardson*, 403 U.S. 365, 372-373 (1971), the Supreme Court identified classifications based on alienage, similar to those based on nationality, or race as "inherently suspect and subject to close judicial scrutiny." The Supreme Court described the "traditional indicia of suspectness" as applying to a class "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).

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

Response: The separation of powers within our Constitution ascribes separate and independent powers among the legislative, executive, and judicial branches of the government. This separation of powers is intended to ensure that no one branch is more powerful than another. *See generally*, *Morrison v. Olson*, 487 U.S. 654 (1988).

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 approach a case like this as I have approached all cases that have come before me over the last 16 years on the state and federal benches. I would meticulously consider the parties' arguments and evaluate the relevant statutes and all binding precedent. I would follow the Ninth Circuit and Supreme Court precedent.

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

Response: For the 16 years I have served on the state and federal benches, I have approached all cases with an open mind, considered the issues fairly and impartially, and faithfully applied the law to the facts of the case without regard to any personal views. If I am confirmed as a district judge, I will continue to faithfully uphold the rule of law.

18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Both hypothetical choices are unacceptable. Constitutional laws must be upheld and unconstitutional laws invalidated. Upholding the rule of law in every instance is that which ensures the legitimacy of the judiciary and fulfills its obligation under the U.S. Constitution.

19. 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 had the opportunity to study this issue. In my 16 years on the state and federal benches I have upheld the rule of law and followed binding precedent from the appellate courts, including the Ninth Circuit and the Supreme Court. If confirmed, I will continue to follow all binding precedent.

20. 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 court's power to invalidate legislative and executive actions as being unconstitutional…" 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."

21. 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: In *Cooper v. Aaron*, 358 U.S. 1 (1958), the Supreme Court, in affirming that the federal judiciary is "supreme in the exposition of the law of the Constitution…" concluded it is necessarily incumbent on all state legislators, and federal officers who take an oath pursuant to Art. VI, to support the Constitution. If such officers could disregard the judgments of the courts, the Constitution itself would become a mockery. *Id.* at 18.

22. 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: Judicial restraint serves the Court's limited role in interpreting statutes and the U.S. Constitution. For judges to attempt to extend their authority beyond this limited role can undermine the court's legitimacy.

23. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: If I am confirmed as a U.S. District Judge, I would be duty bound to apply all binding precedent from the Ninth Circuit and the Supreme Court. A trial court judge is obliged to ensure the proper development of the factual record and apply the law to the facts. It is not the trial court's role to disregard or reinterpret binding precedent.

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

Response: None.

25. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not familiar with the definition offered in this question. Black's Law Dictionary (11th ed. 2019) defines the term "equity" as "[f]airness; impartiality; evenhanded dealing." If I am fortunate to be confirmed, I would treat all persons in a fair, impartial, and evenhanded manner without regard to their race, gender, or status as I have done as a judge over the last 16 years.

26. 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." It defines "equality" as "[t]he quality, state, or condition of being equal."

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

Response: While the Fourteenth Amendment includes the word "equal," it does not include the word "equity."

28. How do you define "systemic racism?"

Response: The Merriam-Webster dictionary defines this term to mean "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems…"

29. 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."

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

Response: As described in my responses to Questions 28 and 298, "systemic racism" is "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems…" and "critical race theory" is defined as a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

31. In notes you prepared for a speech you gave to the incoming class at Oregon Law in 2019, you spoke about Ibram X. Kendi. You stated to those students, "I'd like to push some of Ibram's ideas a bit further." Kendi is well-known for saying:

> **"[t]he only remedy to racist discrimination is anti-racist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination."**

During the nominations hearing in this committee on October 4, 2023, you stated several times that you "didn't recall" telling the students you wanted to push Kendi's ideas further. Was it appropriate for you as a federal magistrate judge to praise Kendi, a person who encourages overt discrimination?

Response: At the Committee hearing on October 4, 2023, I was unable to recall the statement to which you referred. I have reviewed my speech notes and located the reference: I was giving a speech to incoming law students at the University of Oregon School of Law. It was not until the Committee hearing that I became aware of the quotation from Mr. Kendi, and so I would not have referred to it during my speech to the law students or in any other speech.

Rather, in the speech I referred to Mr. Kendi's idea that when someone takes a public position on a matter it is likely that someone else will take an opposing public position. Mr. Kendi described this back-and-forth in the context of race. As my notes indicate, in my speech I said I'd like to "push" it further by applying this idea to the experiences of students and the hard choices they would face. I specifically referred to the idea that when students embark on anything worthwhile, oftentimes they may find an obstacle or an opposing force that may make them question whether they made the right choice. In my speech I gave a few examples. One example involved an attorney who, upon declaring her intent to retire, was suddenly approached with the case of a lifetime. Another example involved someone accepting a job offer out of necessity, and then, soon after, receiving a call about the job they really wanted. I took what I understood to be Mr. Kendi's idea about action and reaction, and I turned it into motivation for students to stay engaged and not second-guess their hard choices. I explained that the goal is not about getting to the finish line but simply staying in the race.

I do not condone or profess discrimination. In my work on the bench for over 16 years, I have treated every litigant with fairness and respect. As a sitting federal judge and former state court judge, I have applied the law to the facts in an evenhanded way with a focus on abiding all applicable precedent of the Supreme Court, the Ninth Circuit, and state appellate law. In my work with students and other members of the public, I encourage people to remain engaged and to believe in our systems of government.

32. Do you now distance yourself from Kendi's extreme ideology? If not, how would you push Kendi's message of overt discrimination "a bit further" as a federal district court judge?

Response: Please see my response to Question 31. I am generally familiar with Mr. Kendi's work as he has written several New York Times Bestsellers. However, I have not read every book he has written, and I am not aware of every idea that he has expressed. I have never adopted Mr. Kendi's ideology about remedying racism by discriminating, which I first

learned of during my hearing. I do not condone any ideology or practice that discriminates. My interest outside of my judicial work is dedicated to finding ways to build community. I am committed to finding ways to increase access to our courts so that everyone, regardless of their backgrounds, can present their best selves, their best arguments, and their best cases to the court.

33. You stated that "DEI: diversity, equity, and inclusion is the heart and soul of the court system. Can we say that? Yeah, I just did, and I say it proudly" to the Oregon State Bar in May of this year. Does your commitment to DEI come before your commitment to the Constitution, to the law itself, or to equal justice under the law?

Response: No. The rule of law is the foundational principle of our Constitutional democracy. In my public service over the last 16 years on the state and federal courts, I have taken an oath to defend our Constitution and apply all laws faithfully and impartially. I continue to abide by my oath.

I can appreciate that people may have different understandings of what diversity, equity, and inclusion can mean. In the context I use those terms, I mean a commitment to finding ways to increase opportunities for all people from all backgrounds in our legal system. When I referred to DEI being the heart and soul of the court system, my intent, and the meaning I believe the audience in Oregon understood those terms to mean, was increasing access to the courts. In no way did I intend the use of those terms to mean that I supplanted our Constitution, the law, or equal justice under the law.

34. Your speech to the Oregon State Bar included your justification for enforcing a rigorous "pronoun" policy in your courtroom. You acknowledged that this is a political subject. You stated, "If I start doing this, won't it appear political? This is political, and I shouldn't be doing political things. I shouldn't be the source of controversy." Now, you have embraced the controversy and have become an advocate for forcing others to use an individual's pronouns. Is it appropriate for a federal judge to proactively become the source of political controversy? How do you plan on separating your passion for the ubiquitous adoption of pronoun ideology from your judgments?

Response: As I testified during my hearing, my courtroom practices are designed to ensure that all parties, counsel, jurors, witnesses, courtroom staff, and public observers are treated with respect and dignity. As such, I instruct that "attorneys and parties should conduct themselves with decorum and manners." These and other practices I have adopted are consistent with Canon 3(A)(3) of the Code of Conduct for the United States Judges which provides that "a judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process." No party or

attorney who has appeared before me has declined to address another party or attorney by their identified pronouns. If such an issue arose in my courtroom, I would address that issue consistent with my obligations to accord the persons before me the full right to be heard and to dispose of matters promptly, efficiently, and fairly while also affording full and complete respect for the First Amendment rights of every person appearing before the court.

With respect to my judicial service, I have served for 16 years on the state and federal benches and as a neutral appellate decision maker for 4 years on the Oregon Workers' Compensation Board. I have presided over 5,000 matters in my judicial career, and I have issued over 400 written opinions as a United States Magistrate Judge. My judicial opinions have been upheld over ninety-nine percent of the time. In these 20 years I have faithfully fulfilled my oath to defend our Constitution and all state and federal laws. My record reflects that commitment, and I will continue to steadfastly apply the law to the facts in all cases, and I will faithfully apply all binding precedent of the Ninth Circuit and Supreme Court.

Last year the Oregon State Bar recognized my judicial service by awarding me with the Wallace P. Carson Jr. Award for Judicial Excellence. The award recognizes service to the law and the profession. The Oregon State Bar notified me that it is conferring on me its annual Judge John Acosta Professionalism Award. In this District Court nomination process, the American Bar Association unanimously found me well-qualified. I point to these recognitions as evidence that the Oregon legal community trusts my judicial service. My work to find ways in my courtroom to respectfully acknowledge all parties has been consistent with the ideals of ensuring equal access to our courts, and it does not affect my legal decision making.

35. The Trevor Project reported on a survey conducted in 2020, indicating that twenty five percent of youth use pronouns other than "he/him" or "she/her," including "neopronouns such as ze/zir or fae/faer." You stated that "misgendering is harmful, plain and simple," and using the wrong pronouns "erases [that person's] identity." If a person in your courtroom asks to be called by pronouns such as "Kitten/Kittenself," or perhaps by neopronouns of a vulgar nature, would you do so? Would you require every other person in your courtroom to refer to them by those pronouns as well?

Response: No, and no. I am unfamiliar with the expansive use of pronouns described as neopronouns in this question. As I testified during my hearing, my courtroom practices are designed to ensure that all parties, counsel, jurors, witnesses, courtroom staff, and public observers are treated with respect and dignity. As such, I instruct that "attorneys and parties should conduct themselves with decorum and manners." These and other practices I have adopted are consistent with Canon 3(A)(3) of the Code of Conduct for the United States Judges which provides that "a judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge's control,

including lawyers to the extent consistent with their role in the adversary process." No party or attorney who has appeared before me has declined to address another party or attorney by their identified pronouns. If such an issue arose in my courtroom, I would address that issue consistent with my obligations to accord the persons before me the full right to be heard and to dispose of matters promptly, efficiently, and fairly while also affording full and complete respect for the First Amendment rights of every person appearing before the court.

36. **In the October 4th, 2023 hearing, you told Senator Kennedy that "it's an offer, not a requirement" to use another person's declared pronouns or honorifics. However, in the speech you gave to the Oregon State Bar on May 19, 2023, you stated the following: "If somebody has identified themselves by a particular honorific, I say explicitly, opposing counsel is obliged to comply. It is not voluntary, it is not optional, and you will be called on it." (59:34-1:00:10). Is it your intention to apply your pronoun policy as an offer, or as an obligation? How would you deal with an individual who exploits your courtroom pronoun policy, and how would you judge their sincerity?**

Response: My guidance on pronouns is an offer not an obligation. As I testified during my hearing, my courtroom practices are designed to ensure that all parties, counsel, jurors, witnesses, courtroom staff, and public observers are treated with respect and dignity. As such, I instruct that "attorneys and parties should conduct themselves with decorum and manners." These and other practices I have adopted are consistent with Canon 3(A)(3) of the Code of Conduct for the United States Judges which provides that "a judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process." No party or attorney who has appeared before me has declined to address another party or attorney by their identified pronouns. If such an issue arose in my courtroom, I would address that issue consistent with my obligations to accord the persons before me the full right to be heard and to dispose of matters promptly, efficiently, and fairly while also affording full and complete respect for the First Amendment rights of every person appearing before the court.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Mustafa Taher Kasubhai, nominated to be United States District Judge for the District of Oregon

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.

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: If a case concerning a potential unenumerated right were to come before me, I would apply the test set forth in *Washington v. Glucksberg*, 521 U.S. 702 (1997). *Glucksberg* provides that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Id.* at 720-21 (internal quotation marks and citations omitted).

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: Humility is the foundation of my judicial philosophy. Striving to practice humility in my judicial work supports my effort to treat everyone who appears in my courtroom with dignity and patience. It supports my effort to listen carefully and work hard to evaluate the facts, understand the legal arguments, and comprehend the law which I will apply to the facts. Finally, humility is the necessary support for upholding the rule of law and remaining faithful to all binding precedent. I have not closely studied the judicial philosophies of the many justices who have served on the Supreme Court, and I would not identify any one justice or judge that exemplifies this philosophy at the risk of excluding countless justices and judges who embody this philosophy.

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 "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted" and, more specifically, as "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." I would not characterize myself by any label. As a judge and a judicial nominee, I am faithful to the rule of law and will apply all Ninth Circuit and Supreme Court precedent. For example, the Supreme Court has provided

instruction on interpretive methods. *See*, *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

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 the term "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I would not characterize myself by any label. The Constitution is a written document, the text of which does not change unless it is amended in accordance with the procedures set forth in Article V. The Supreme Court has explained that the Constitution is an enduring document with a "historically fixed meaning" that can "appl[y] to new circumstances." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

6. If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?

Response: If I were presented with such an issue of first impression, I would look to the text and the Supreme Court guidance as to the method of interpreting the text, the role of the provision in the constitutional structure, and any evidence of the original public meaning of the provision. If the original public meaning of the Constitution were clear and resolved the issue, my inquiry would end there. *See District of Columbia v. Heller*, 554 U.S. 570 (2008).

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: I would interpret the Constitution consistent with the holdings of the Supreme Court and Ninth Circuit. For example, in *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), the Court held that courts must look to the original public meaning of a provision of the U.S. Constitution. In *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Court explained that it "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Id.* at 1738. In *Graham v. Florida*, 560 U.S. 48 (2010), the Court advised it was appropriate to consider "evolving standards of decency that mark the progress of a maturing society" in determining whether a form of punishment violates the Eighth Amendment. *Id. at 58.*

8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: The Constitution is a written document, the text of which does not change unless it is amended in accordance with the procedures set forth in Article V. The Supreme Court has explained that the Constitution is an enduring document with a "historically fixed meaning" that can "appl[y] to new circumstances." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

9. Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?

Response: *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), is binding precedent.

a. Was it correctly decided?

Response: As a judge and a judicial nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts, and I would not want litigants to think I have prejudged such issues. See Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* is binding precedent, and I would apply it fully and faithfully.

10. Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?

Response: *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), is binding precedent.

a. Was it correctly decided?

Response: As a judge and a judicial nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts, and I would not want litigants to think I have prejudged such issues. See Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen* is binding precedent, and I would apply it fully and faithfully.

11. Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?

Response: *Brown v. Board of Education*, 347 U.S. 483 (1954), is binding precedent.

a. Was it correctly decided?

Response: As a judge and a judicial nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts, and I would not want litigants to think I have prejudged such issues. See Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Brown v. Board of Education* is binding precedent, and I would apply it fully and faithfully. As prior judicial nominees have noted, the legal issues presented in *Brown* are unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Brown* was correctly decided.

12. Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?

Response: *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023), is binding precedent.

a. Was it correctly decided?

Response: As a judge and a judicial nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts, and I would not want litigants to think I have prejudged such issues. See Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Students for Fair Admissions v. Harvard* is binding precedent, and I would apply it fully and faithfully.

13. Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?

Response: *Gibbons v. Ogden*, 22 U.S. 1 (1824) is binding precedent.

a. Was it correctly decided?

Response: As a judge and a judicial nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts, and I would not want litigants to think I have prejudged such issues. See Code of Conduct for United

States Judges, Canon 3(A). The Supreme Court's decision in *Gibbons v. Ogden* is binding precedent, and I would apply it fully and faithfully.

14. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?

Response: The Bail Reform Act of 1984, 18 U.S.C. §§3141, et seq., provides for the rebuttable presumption in favor of pretrial detention for certain enumerated drug offenses carrying a sentence of ten years or more, certain crimes involving acts of terrorism, certain crimes of violence, and certain crimes involving minors. Specifically, 18 U.S.C. §3142 (f)(1) lists the offenses or criteria that create a presumption in favor of pre-trial detention.

a. What are the policy rationales underlying such a presumption?

Response: While I am unaware of any explicitly stated policy reason for this presumption, the Bail Reform Act requires a judicial officer to consider the risks of flight and danger to the community in determining whether to order pre-trial release or detention.

15. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?

Response: Yes, The Free Exercise Clause of the First Amendment prohibits discrimination on the basis of religion, and it constrains the federal government's interactions with private institutions, including religious organizations and small businesses operated by observant owners. If a law or policy burdens religion and is not "neutral and of general applicability," the government must establish that the law or policy satisfies strict scrutiny. To survive that standard, the challenged law "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *See*, *Tandon v. Newsom*, 141 S. Ct. 1294, 1296-97 (2021) (per curiam). If the government cannot meet this high burden, the action is unconstitutional. The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1, imposes statutory limits. In *Burwell v. Hobby Lobby Stores*, Inc., 573 U.S. 682 (2014), the Supreme Court held that RFRA protects the religious exercise of religious organizations and small businesses operated by observant owners. *Id.* at 719.

16. Is it ever permissible for the government to discriminate against religious organizations or religious people?

Response: Please see my response to Question 15.

17. In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.

Response: The Supreme Court held that the church and synagogues were entitled to a preliminary injunction because they had "made a strong showing that the challenged restrictions violate the minimum requirement of neutrality to religion." *Roman Catholic 6 Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020) (internal punctuation omitted). The Supreme Court reached this conclusion, in part, because of evidence that the rules appeared to be targeting Orthodox Jews as well as evidence that comparable secular activity was not subject to the same restrictions. *Id.* at 66-67. The Supreme Court further concluded that the challenged restrictions, if enforced, would cause irreparable harm in the form of lost First Amendment freedoms. *Id. See also*, *Tandon v. Newsom*, 141 S. Ct. 1294, (2021).

18. Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom.*

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court enjoined California from imposing Covid-19 restrictions on private gatherings to at-home religious exercise. The Court explained that where a regulation treats comparable religious activity less favorably than secular activity, it fails strict scrutiny unless the government can "show that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297.

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

Response: Yes. *See Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022).

20. Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.*

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Colorado Civil Rights Commission's initiation of an enforcement action against a cake shop owner, who declined for religious reasons to make a wedding cake for a same-sex couple, violated the First Amendment. Examining the evidentiary record, the Supreme Court found that the Commission demonstrated "clear and

impermissible hostility toward the sincere religious beliefs that motivated [the baker's] objection." *Id.* at 1729.

21. 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. An individual's religious belief, if "sincerely held," need not be "logical, consistent and comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021). The Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act also include broad language protecting "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *See Burwell v. Hobby Lobby*, 573 U.S. 682, 695–696 (2014).

a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?

Response: Yes. Please see my response to Question 21.

b. Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?

Response: Yes. Please see my response to Question 21.

c. Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?

Response: I am not familiar with the official positions of the Catholic Church on this subject, and, as a sitting U.S. Magistrate Judge and as a judicial nominee, it would not be appropriate for me to opine on the positions of a religious institution.

22. In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), Catholic school teachers sued their employers alleging employment discrimination. The Supreme Court held that the "ministerial exception" protects religious institutions from certain discrimination claims and that such institutions are permitted to "decide matters of faith and doctrine without government intrusion." *Id.* at 2060. The Court found that, even

though the teachers were not "ministers," the specific role of the teachers was "educating young people in their faith, inculcating its teachings, and training them to live their faith," which the Court concluded was central to the school's mission. *Id.* at 2064.

23. In *Fulton v. City* of *Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the Supreme Court held that "[t]he refusal of Philadelphia to contract with [Catholic Social Services] for the provision of foster care services unless it agrees to certify same-sex couples as foster parents cannot survive strict scrutiny, and violates the First Amendment." *Id.* at 1882. The Court applied strict scrutiny after determining that Philadelphia's policy burdened the organization's religious beliefs and was not a generally applicable policy.

24. In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.

Response: The Supreme Court held that Maine's "nonsectarian" requirement for otherwise generally available tuition assistance payments violated the Free Exercise Clause because a State may not exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits. *Carson v. Makin*, 142 S. Ct. 1987, 1997-98, 2002 (2022).

25. Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), "a government entity sought to punish an individual for engaging in a brief, quiet, personal religious observance doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment. And the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech." *Id.* at 2433. The Supreme Court held that "[t]he Constitution neither mandates nor tolerates that kind of discrimination." Additionally, the Court abrogated the Lemon Test relating to Establishment Clause jurisprudence.

26. Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court granted the petition for certiorari, vacated the judgment below, and remanded for further proceedings in light of *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). Justice Gorsuch wrote that the lower courts had not properly applied the strict scrutiny test required by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(a). *See Mast*, 141 S. Ct. at 2432-34 (Gorsuch, J., concurring).

27. 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: If confirmed and confronted with a case that required interpretation of Title 18, United States Code, Section 1507 considering its constitutionality, I would assess the matter based on the facts before me, the parties' arguments, and the governing law, including all binding Ninth Circuit and Supreme Court precedent.

28. 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.

29. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: I am not aware that the District Court for the District of Oregon provides such trainings. If confirmed, I would not support such trainings.

30. 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.

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

Response: The executive and legislative branches are required to follow the Constitution in making political appointments. If confirmed, and if such an issue were to come before me, I would faithfully apply all binding precedent from the Ninth Circuit and Supreme Court to resolve the case.

32. If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?

Response: The Supreme Court has held that disparate impact claims are cognizable under certain federal anti-discrimination laws. *See*, *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 534, 539 (2015). I am not aware of any Ninth Circuit or Supreme Court precedent that address subconscious racial discrimination as evidence of disparate impact. If this issue came before me as a district court judge, I would fully and faithfully apply binding Ninth Circuit and Supreme Court precedent to the facts before me.

33. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: Whether the Supreme Court should be expanded is a question for policymakers to consider. If confirmed as a district court judge, I would faithfully follow binding Supreme Court precedent regardless of its composition.

34. In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?

Response: No.

35. What do you understand to be the original public meaning of the Second Amendment?

Response: The Supreme Court described in detail the original public meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). In summary, the right to bear arms is a fundamental right that extends to state actions, and restrictions or regulations on the right to bear arms may not be any more restrictive than the regulations imposed on the right to bear arms at the time the Second Amendment was adopted. As a U.S. Magistrate Judge I am oath-bound to faithfully apply these binding precedents. If confirmed, I would continue to faithfully apply these binding precedents and any other binding Ninth Circuit and Supreme Court precedent interpreting the Second Amendment.

36. 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: Please see my response to Question 35. In *New York State Rifle and Pistol v. Bruen*, 142 S. Ct. 2111, 2126 (2022), the Supreme Court held that a firearm restriction violates the Second Amendment if the government is unable to demonstrate that its regulation restricting firearms is consistent with this Nation's historical tradition of firearm regulation.

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

Response: Yes. *See*, *District of Columbia v. Heller*, 554 U.S. 570 (2008).

38. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: No. In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that "the constitutional right to bear arms in public for self-defense is not a second class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Id.* at 2156 (quoting *McDonald v. City of Chicago*, 561 U.S. 742 (2010)) (internal quotation marks omitted).

39. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: No. Please see my answer to Question 38.

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

Response: The executive branch has broad discretion in deciding how to prosecute cases. *See*, *Wayte v. United States*, 470 U.S. 598, 607 (1985); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 248 (1980); *Heckler v. Cheney*, 470 U.S. 821, 831 (1985) (the court held that the decision not to prosecute or enforce, whether through criminal or civil process, is a decision generally committed to an agency's absolute discretion). As a sitting judge and judicial nominee, it would be inappropriate for me to offer an opinion as to how this discretion should be exercised.

41. 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 (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." "Administrative rule" is defined as "[a]n officially promulgated agency regulation that has the force of law." My understanding of a "substantive administrative rule change" is a substantive change to an administrative rule.

42. Does the President have the authority to abolish the death penalty?

Response: The federal death penalty is codified in 18 U.S.C. § 3591, and the President does not have the power to unilaterally abolish federal statutes. The Supreme Court stated in *Clinton v. City of New York*, 524 U.S. 417, 438 (1998) "there is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes."

43. Explain the U.S. Supreme Court's holding on the application to vacate stay in Alabama *Association of Realtors v. HHS.*

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485 (2021), the Supreme Court held that the Centers for Disease Control lacked the authority to impose a nationwide moratorium on evictions to protect tenants from COVID-19, and to slow the spread of disease. Finding that petitioners were likely to succeed on the merits of their claim, the Court vacated a stay imposed pending appeal of a district court's nationwide injunction against the imposition of the moratorium.

44. 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 U.S. Magistrate Judge and a judicial nominee, under the Code of Conduct for United States Judges, it would be inappropriate for me to comment on hypotheticals or issues that could become the subject of litigation. If confirmed as a district court judge, should a case involving this issue come before me, I would fairly and impartially review the facts presented, research the applicable law, and apply any binding Ninth Circuit and Supreme Court precedent.

45. Your sympathy for Marxism seems to be a core belief of yours. During a 2020 speech titled "Reflections on Equity and Privilege" you said "First, the world is wide enough for all of us. Privilege derives its power from the belief in scarcity. Scarcity of money, natural resources, food, and power itself. The desire to control it all drives privilege. I want to suggest to you that equity, the ideal of equity rejects this model of scarcity."

a. Do you believe that in America there is a system of artificial scarcity that reinforces systems of privilege? Your answer should begin with a yes or no.

Response: In 2020, I gave a speech about the value of diversity in our communities and why I regard it as important to consider everybody's voice and to afford everyone personal dignity. I made the point that, while people may have differential access to scarce resources such as money, food, power, and natural resources, personal dignity is an endless resource that I strive to afford to anyone and everyone with whom I interact. As a judge, and as a proud American, I have committed to the value that no one should have more or less access to personal dignity than any other person.

I did not say and do not believe that there is an artificial scarcity that reinforces systems of privilege. Indeed, scarcity is a key economic concept, and a reality of the American economic system. My comments did not endorse an alternative economic or political model in any way whatsoever. The point I made was that there should be no scarcity when it comes to the concept of personal dignity.

The more complete quote reads "privilege derives its power from the belief in scarcity. Scarcity of money, natural resources, food, and power itself. The desire to control it all, drives privilege. Equity rejects the model of scarcity. I must be committed to the idea that your voice need not deprive me of mine. Equity also subscribes to the ideal that dignity is the foundational currency. I need not deprive another of her dignity to preserve mine."

My intent was to share the idea that dignity and respect for one another is an unlimited resource and to set out the ways in which I strive to treat others with an abundance of dignity and respect. Let me state unequivocally as I did during my hearing: I am not, and never have been, a Marxist. I have never espoused, nor subscribed to, Marxist theories. Rather, I have been an active participant in, and beneficiary of, the American capitalist system, as is clear from my own holdings of private property and securities as detailed in the statement of net worth as provided to this Committee.

b. Do you think the protection of private property as found in the Fifth Amendment is valid? Is it equal to the other rights found in our Bill of Rights?

Response: Yes. The protection of private property as found in the Fifth Amendment is valid, and it is equal to other rights found in our Bill of Rights.

46. What is white privilege?

Response: The Merriam-Webster dictionary defines "white privilege" as "the set of social and economic advantages that white people have by virtue of their race."

47. You have encouraged litigants to use personal pronouns, stating on your court website that using pronouns "earns the public's trust," correct?

Response: As I testified during my hearing, my courtroom practices are designed to ensure that all parties, counsel, jurors, witnesses, courtroom staff, and public observers are treated with respect and dignity. As such, I instruct that "attorneys and parties should conduct themselves with decorum and manners." These and other practices I have adopted are consistent with Canon 3(A)(3) of the Code of Conduct for the United States Judges which provides that "a judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process." No party or attorney who has appeared before me has declined to address another party or attorney by their identified pronouns or honorifics. If such an issue arose in my courtroom, I would address that issue consistent with my obligations to accord the persons before me the full right to be heard and to dispose of matters promptly, efficiently, and fairly while also affording full and complete respect for the First Amendment rights of every person appearing before the court.

With respect to my judicial service, I have served for 16 years on the state and federal bench, and as a neutral appellate decision maker for 4 years on the Oregon Workers' Compensation Board. I have presided over 5,000 matters in my judicial career, and I have issued over 400 written opinions as a United States Magistrate Judge. My judicial opinions have been upheld

over ninety-nine percent of the time. In these 20 years I have faithfully fulfilled my oath to defend our Constitution and all state and federal laws. My record reflects that commitment, and I will continue to steadfastly apply the law to the facts in all cases, and I will faithfully apply all binding precedent of the Ninth Circuit and Supreme Court.

Last year the Oregon State Bar recognized my judicial service by awarding me with the Wallace P. Carson Jr. Award for Judicial Excellence. The award recognizes service to the law and the profession. The Oregon State Bar notified me that it is conferring on me its annual Judge John Acosta Professionalism Award. In this District Court nomination process, the American Bar Association unanimously found me well-qualified. I point to this recognition as evidence that the Oregon legal community trusts my judicial service. My work to find ways in my courtroom to respectfully acknowledge all parties has been consistent with the ideals of ensuring equal access to our courts, and it does not affect my legal decision making.

a. Is it true that you require litigants to address other parties by their preferred pronouns, correct?

Response: No. Please see my response to Question 47.

b. What is the penalty if they fail to observe your rule?

Response: Please see my response to Question 47. No party or attorney who has appeared before me has declined to address a party or attorney by their identified pronouns. If such an issue arose in my courtroom, I would address that issue consistent with my obligations to accord the persons before me the full right to be heard and to dispose of matters promptly, efficiently, and fairly, while also according full and complete respect for the First Amendment rights of everyone who appears in court. I have not ever imposed a penalty of any kind with respect to the use of honorifics or pronouns.

c. Could forcing pronoun usage violate the free speech rights of a party before you?

Response: Please see my responses to Questions 47 and 47b.

48. In *Boudjerada v. City of Eugene* you granted a motion for summary judgment holding that a city-wide curfew imposed by the City of Eugene during the course of destructive rioting in the summer of 2020 violated the First Amendment. Further, you also faulted the city for not leaving "alternate channels" open during the nighttime demonstrations.

a. What Ninth Circuit or Supreme Court precedent supports your claim that alternate channels must be available for twenty-four hours?

Response: My opinion did not require that alternate channels must be available for twenty-four hours. In the case before me, the city-wide curfew for all of Eugene, Oregon, was imposed for a period of seven hours. It was a complete ban on demonstrations in all public forums, and without any public alternative channels. The court in *Menotti* discusses appropriate alternative channels. There, the court found Seattle's provision for protesting outside of the restricted area satisfied the alternative channels requirement. *Menotti v. City of Seattle*, 409 F.3d 1113, 1138 (9th Cir. 2005).

b. Did you cite any in your opinion?

Response: Please see my answer to Question 48a. My opinion does not require that alternate channels must be available for twenty-four hours.

c. Does any Supreme Court precedent contradict that assertion? If so, please list them and their holdings.

Response: Please see my answer to Question 48a. My opinion does not require that alternate channels must be available for twenty-four hours.

49. In 2020, while serving as a magistrate judge, you delivered a speech where you condemned America as Islamaphobic, stating "the identity of Muslims also need to be normalized in a country that is so deeply Islamophobic"

a. Do you still believe that America is Islamophobic?

Response: First, I respectfully object to the characterization that I condemn our country. Offering criticism and remaining engaged in the systems that make our country great and resilient is patriotic. I am proud to be an American citizen, and I value the freedoms our Constitution affords all of us. I am grateful to our form of government that recognizes we always have room to be better as we strive to form that more perfect union every day. Although we live in a great country, I have unfortunately experienced exclusion and discrimination because of my heritage. I have also seen family members and friends, who are Muslim, experience discrimination over the years. For example, while a state

court judge and in the courthouse, I was called sandn****r and camel jockey. In another instance, a litigant who did not agree with my ruling exclaimed something to the effect that "we don't need Muslims in this country and someone should take him out," referring to me. Because of the credible threat, the sheriff's office posted security patrols at my home for several months. These were the kinds of experiences to which I referred in the speech you referenced.

b. If so, why?

Please see my response to Question 49a.

50. The Supreme Court upheld President Trump's so-called "travel ban" in *Trump v. Hawaii*. You referred to President Trump's action as a "Muslim Ban."

a. Was the Supreme Court's opinion in *Trump v. Hawaii* correctly decided?

Response: *Trump v. Hawaii* is binding precedent. As a judge and a judicial nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. See Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Trump v. Hawaii* is binding precedent, and I would apply it fully and faithfully.

51. You have also praised Ibram X. Kendi. Kendi has argued that "the only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination."

a. Do you agree with these statements?

Response: No, I do not agree with those statements. I learned about these statements for the first time at the Committee hearing. My understanding of diversity and equity does not include fighting discrimination with discrimination. I am absolutely opposed to such an idea or practice. As Gandhi once said, "an eye for an eye leaves the whole world blind." I am generally familiar with Mr. Kendi's work as he has written a number of New York Times Bestsellers. However, I have not read every book he has written, nor am I aware of every idea he has expressed.

Questions from Senator Thom Tillis
for Mustafa Taher Kasubhai, nominee to United States District Judge for the District of Oregon

1. **Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

   Response: As a sitting judge on the state and federal courts for over 16 years, it is my view that a judge should not let personal views and background interfere with their responsibility to impartially interpret and apply the law.

2. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is a necessary expectation and requirement for all judges.

3. **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, usu. 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 antithetical to the rule of law and would undermine the necessary and appropriate role of judges who take an oath to uphold the rule of law.

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: There can be no undesirable outcome where a judge is concerned, when he or she faithfully interprets the law according to binding precedent. As a sitting federal judge and formerly a state court judge for over 16 years, I have strived, and continue to strive, to faithfully apply the law to the facts in reaching a decision, without regard to the outcome.

6. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?

Response: If confirmed, I will continue, as I have done for the last 16 years serving on the court, to faithfully apply all laws and binding precedent from the Ninth Circuit and Supreme Court. With respect to rights arising out of the Second Amendment, I will adhere to the binding precedent of our Supreme Court. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." *Id.* at 595. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), this right is incorporated and applied to the states via the Fourteenth Amendment. In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court further clarified that any laws regulating the right to keep and bear arms must be "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130.

7. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: The qualified immunity inquiry is a two-part test. Government officials are entitled to immunity from claims brought under 42 U.S.C. § 1983 unless (1) they violate a "statutory or constitutional right" and (2) that right was "clearly established at the time" of the violation. *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). I would carefully consider the record and the issues presented before me, and I would evaluate and apply all binding precedent in considering qualified immunity cases.

8. 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 who must make split-second decisions when protecting public safety is a question of policy properly addressed by policy makers. If confirmed as a district judge, I would faithfully apply binding precedent from the Ninth Circuit and Supreme Court to the facts of the cases that would come before me, including in cases raising questions about qualified immunity.

9. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see my answer to Question 8.

10. What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?

Response: The Constitution empowers Congress to enact patent and copyright legislation. Article I, Section 8, Clause 8. If confirmed, I would ensure that all litigants in all cases, including IP cases, would be able to make their best case before me. I would accomplish this by ensuring equal access to the courts. Moreover, I would faithfully follow the binding precedent from the Ninth Circuit, Federal Circuit, and Supreme Court to all cases that come before me.

11. In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"

Response: In the District Court for the District of Oregon where I serve as a United States Magistrate Judge, all cases are assigned randomly. It has been my observation and experience with this method of random assignment that no one kind of case is directed to a limited number of judges. This helps to provide for fair and impartial evaluations of all cases that come before the court.

12. 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 shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?

Response: As a judge and judicial nominee, it would not be appropriate to comment on the correctness or clarity of Supreme Court patent eligibility precedent in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6). I am bound to abide by the Code of Conduct and to apply precedent of the Federal Circuit, the Ninth Circuit, and the United States Supreme Court for patent cases, and if confirmed I will continue to abide by the Code and to apply all binding precedent.

13. While sitting as a federal magistrate judge, you made a speech in 2020 in which you suggested that scarcity of natural resources was a fiction create by privilege. This is an idea that is far outside of mainstream political and economic theory. Some would even call it Marxist. You are certainly entitled to your opinion. But my question is why did you feel the need to publicly make these claims while sitting as a federal judge?

Response: In 2020 I gave a speech about the value of diversity in our communities and why I regard it as important to consider everybody's voice and to afford everyone personal dignity.

I made the point that, while people may have differential access to scarce resources such as money, food, power, and natural resources, personal dignity is an endless resource that I strive to afford to anyone and everyone with whom I interact. As a judge, and as a proud American, I have committed to the value that no one should have more or less access to personal dignity than any other person.

I did not say, and do not believe, that scarcity of natural resources is a fiction. Indeed, scarcity is a key economic concept and a reality of the American economic system. My comments did not endorse an alternative economic or political model in any way whatsoever. The point I made was that there should be no scarcity when it comes to the concept of personal dignity.

The more complete quote reads "privilege derives its power from the belief in scarcity. Scarcity of money, natural resources, food, and power itself. The desire to control it all, drives privilege. Equity rejects the model of scarcity. I must be committed to the idea that your voice need not deprive me of mine. Equity also subscribes to the ideal that dignity is the foundational currency. I need not deprive another of her dignity to preserve mine."

My intent was to share the idea that dignity and respect for one another is an unlimited resource, and to set out the ways in which I strive to treat others with an abundance of dignity and respect. Let me state unequivocally as I did during my hearing: I am not, and never have been, a Marxist. I have never espoused, nor subscribed to, Marxist theories. Rather, I have been an active participant in, and beneficiary of, the American capitalist system, as is clear from my own holdings of private property and securities as detailed in the statement of net worth as provided to this Committee.

14. How would your views on property rights inform your rulings? Particularly, will you commit to following the law as written, or will you interpret the law based on your expressed views of property rights?

Response: Please see my answer to Question 13. For over 16 years I have served on the state and federal courts. Before joining the bench, I served as a neutral appellate decision maker for 4 years on the Oregon Workers' Compensation Board. I have presided over more than 5,000 matters in my judicial career, and I have issued over 400 written opinions as a United States Magistrate Judge. In these 20 years in public service, I have faithfully fulfilled my oath to defend our Constitution and all state and federal laws. My record reflects that commitment, and I will continue to steadfastly apply the law to the facts in all cases, and I will faithfully apply all binding precedent of the Ninth Circuit and Supreme Court. As my record on the bench and in legal practice shows, my views on property rights are consistent with state and federal laws, and I commit to following the law as written.

15. Because of your strongly stated beliefs, parties before you may legitimate have concerns about your ability to fairly consider their cases. How would your views on property rights impact your ability to fairly consider cases before you under existing U.S. property law?

Response: Please see my answers to Questions 13 and 14.

Remarks for 10/04/2023 Senate Judiciary Committee hearing as prepared for delivery
Senator Wyden

Chairman Durbin, Ranking Member Graham, members of the committee, I'm very pleased to join you this morning to introduce Judge Kasubhai, nominee for the U.S. District Court for the District of Oregon.

Judge Kasubhai is eminently qualified for this position. You all have his qualifications before you. You can see that before serving as a magistrate judge, he practiced law in Klamath Falls. Now for those who aren't familiar with Klamath Falls–and I am, in fact I will be there for a town hall meeting this weekend–it is a highly rural, agriculture and natural resource-driven economy. It is a place that has to work to recruit lawyers and doctors. Judge Kasubhai would have had a lot of opportunities available to him and it says a lot about his character and care for rural Oregonians that he would seek to fill the need there.

And let me talk a bit more about his qualities that will make him an exceptional judge.

His humility and temperament. His incredible professional achievements can fly under the radar when speaking with him because he lacks even a hint of arrogance. He is just as happy to engage in a conversation with his neighbors back home in Oregon about his passion for woodworking. Members of this Committee may not know that Judge Kasubhai owns a portable sawmill that he uses to mill logs into beautiful finished wood products, such as flooring. So, if you really want a beautiful wood floor, ask the Judge. You've got a guy who knows rural Oregon folks. His combination of personal temperament and professional and life experiences formed in small communities is something that makes him uniquely qualified to understand the issues facing rural America and the implications of cases before him on communities large and small.

Here is what he won't mention: He is the first South Asian-American and first Muslim-American to have served on the Lane County Circuit Court. And when he was appointed as a magistrate judge, he became the first Muslim-American to serve on the federal bench. In his 16 years on the bench, he has won awards for judicial excellence from organizations like the Oregon State Bar and the National Asian Pacific American Bar Association. These are no easy feats and are a testament to his work ethic, as well as his dedication to the law and excellence in the profession. It's no surprise that the American Bar Association unanimously rated him as well qualified, the highest possible rating. To ensure this excellence endures in the community, he mentors students to create hope, opportunities and the next generation of legal professionals

Let me close by saying: Not only did Judge Kasubhai advance through a bipartisan judicial selection commission, he also brings with him letters of support from leaders across Oregon and the political spectrum, from labor organizations to bar associations to the former U.S. Attorney

for the District of Oregon, and the former Chief Judge for the U.S. District Court for the District of Oregon.

I urge all members of this committee to support Judge Kasubhai's nomination, and I will happily speak further with any member to help get his nomination approved.

Congratulations again to Judge Kasubhai on his nomination, and thank you again to Chairman Durbin and the committee for the opportunity to introduce him this morning.



Billy Williams
Partner
(541) 318-9835
billy.williams@bbklaw.com

September 29, 2023

The Honorable Dick Durbin
Chair
Committee on the Judiciary
United States Senate
711 Hart Senate Building
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Building
Washington, D.C. 20510

Re: Nomination of Federal Magistrate Judge Mustafa Kasubhai to the United States District Court of Oregon

Dear Chairman Durbin and Ranking Member Graham:

I write in support of Federal Magistrate Judge Mustafa Kasubhai's nomination to the United States District Court of Oregon. Judge Kasubhai is well-qualified to fill this important federal judgeship.

I served as United States Attorney for the District of Oregon from 2015 to 2021. I had the honor and privilege of serving under both the Obama and Trump administrations. As United States Attorney, I was an advocate for law enforcement, community engagement, strong public safety for all, the rule of law, and the impartial administration of justice. I served as a prosecutor in both the state and federal systems in Oregon for over 30 years. As a former violent crimes prosecutor who pursued justice on behalf of victims of all manner of violence to include sexual assaults, child sex abuse, and all degrees of murder, I have always believed in the rule of law, fairness, and justice for all. What mattered most to me as a prosecutor in court was that the judges were competent, experienced, prepared, and impartial.

Judge Kasubhai has an impeccable history as an experienced jurist in exhibiting these important judicial traits. His record as a judge, and his support of both law enforcement and victims of crime is well-known. His understanding of the necessity for the fair administration of justice to the accused is equally well-known and greatly appreciated. His demeanor in court is always professional, courteous, focused, and direct. He is truly the consummate judicial professional, and to his credit, rightfully expects the same from the litigants and participants appearing in his courtroom. These characteristics are the hallmark of what a member of the federal bench should demonstrate on a daily basis. No one does so better than Judge Kasubhai. The tradition of remarkable appointees in the District of Oregon will be continued with his well-earned confirmation.

Lastly, and in my view importantly, Judge Kasubhai presents an important opportunity for the Senate Judiciary Committee to not only provide an historic appointment to the federal bench in Oregon, but to confirm a well-qualified nominee who is deserving of this honor. I respectfully

and unreservedly recommend that Judge Kasubhai be the next member of the United States District Court of Oregon.

Sincerely,

Billy Williams
of BEST BEST & KRIEGER LLP

BW:aes

Chairman Richard J. Durbin

Ranking Member Lindsay O. Graham

United States Senate Judiciary Committee

224 Dirksen Senate Building

Washington, D.C.

Dear Sirs;

I am writing on behalf of Judge Mustafa Kasubhai, a United States Magistrate Judge here in Oregon who has been nominated to become the next District Judge in Eugene. I have known Judge Kasubhai since he first joined our court in 2018. I have been a District Judge here in Oregon since 2003, when I was nominated by President Bush. I spent several years before that as the United States Attorney, serving with President Bush immediately after 9/11. I feel that I have a good understanding of what it takes to be a successful federal judge. In my view, Judge Kasubhai will be a very fine District Judge.

I think I know Judge Kasubhai's abilities better than most. I was Chief Judge when he was selected as a Magistrate Judge, and I was responsible for the background check prior to his interview. I was also deeply involved in his orientation and training as he joined our court. He brings several great qualities to the bench: (1) he has an unflappable demeanor. This came out strongly as I spoke with people about his time as a state court judge. As a busy judge on a challenging docket, which included not just a populous county but also the University of Oregon, he managed his courtroom with poise and dignity. He treated people fairly, and he kept his courtroom running on a professional level; (2) he is the very soul of fairness. Both sides of the civil and criminal docket reported that they trust him completely. These things—his demeanor and his fairness—have been verified by the way he has conducted himself on our court; (3) he is hard working. Some judges, at some point, figure out that they can just mail it in (especially during the COVID months). Mustafa just kept on working hard. He works hard at his cases, and he tries to be a positive presence in the community; (4) he is not stuck on himself. Although he is a smart, respected member of the legal community, there

is not a trace of arrogance about him. He understands how people live. His skill as a tradesman (he and his wife remodeled their entire home by themselves) keeps him in contact with regular people doing hard work, and it shows in how he comports himself.

I like Mustafa. I think he will do a wonderful job. I think he will be a credit to the federal judiciary, and serve his country well. I know he cares about this country, and what it stands for. His family story of immigrating to the United States has given him an appreciation for what we offer the world that many people lack. I hope you will shepherd his nomination through to a rapid confirmation.

Very Truly Yours,

Michael W. Mosman

NATIONAL EDUCATION ASSOCIATION

1201 16th St., N.W. | Washington, DC 20036 | Phone: (202) 833-4000

Rebecca S. Pringle
President

Princess R. Moss
Vice President

Noel Candelaria
Secretary-Treasurer

Kim A. Anderson
Executive Director

October 3, 2023

Judiciary Committee
U.S. Senate
Washington, DC 20010

Dear Senator:

On behalf of our 3 million members and the 50 million students they serve, we strongly urge you to support Judge Mustafa Kasubhai's nomination to the U.S. District Court for the District of Oregon. Votes on this issue may be included in NEA's report card for the 118th Congress.

As a magistrate judge for the same court since 2018, Judge Kasubhai has already handled much of the work that would come before him as district judge. He previously spent more than a decade as a Lane County circuit court judge and four years as a member of the Oregon Workers' Compensation Board. As a lawyer in private practice, he primarily represented injured workers and union members in employment cases.

Judge Kasubhai received his law degree from the University of Oregon School of Law and his bachelor's degree in business administration from the University of California, Berkeley.

Beyond professional qualifications, Judge Kasubhai brings to the bench real-life perspectives that help further the fundamental goal of equal justice for all. He has extensive experience with working people and unions. The son of Indian immigrants, he would be the first South Asian and Muslim American in Oregon to become a federal judge with lifetime tenure under Article III of the Constitution.

For all of these reasons, NEA strongly urges you to support Judge Mustafa Kasubhai's nomination to the U.S. District Court for the District of Oregon.

Sincerely,

Marc Egan
Director of Government Relations
National Education Association

AFL-CIO

LEGISLATIVE ALERT

October 4, 2023

The Honorable Dick Durbin, Chair
The Honorable Lindsey Graham, Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Graham:

The AFL-CIO writes to offer strong support for the nomination of Magistrate Judge Mustafa T. Kasubhai for the vacancy on the United States District Court for the District of Oregon.

Magistrate Judge Kasubhai is highly qualified for the position with a commitment to serve the public interest. While in private practice, he chose to represent working people in workers' compensation and injury cases and a local labor union in rural Oregon on several occasions. For the last twenty years, he has been in public service, first as the labor member of the Oregon Workers' Compensation Board, later as a state court judge, and most recently as a Federal Magistrate Judge sitting in Eugene, Oregon. His experience as a Federal Magistrate judge, in particular, means he will be able to step into the role of Federal District Court Judge on day one.

Judge Kasubhai will bring diversity to the bench in several ways. The son of South Asian immigrants, he will be the first South Asian and the first Muslim Article III judge in Oregon. Judge Kasubhai has written and spoken extensively on issues of equity, diversity and inclusion, demonstrating a commitment to fair and impartial justice for all in the federal courts. In speaking with union lawyers who have appeared before him on multiple matters, we have heard only positive reviews about his judicial demeanor, intellect and fair approach to the matters before him.

We strongly urge you to move Magistrate Judge Mustafa Kasubhai forward for this vacancy.

Thank you for your consideration of our views.

Sincerely,



William Samuel

Director, Government Affairs

AFSCME
We Make America Happen

Lee Saunders
President

Elissa McBride
Secretary-Treasurer

Vice Presidents

Jody Barr
New Britain, CT
Denise Berkley
Albany, NY
Mark Bernard
Boston, MA
Ron Briggs
Latham, NY
Connie Derr
Albuquerque, NM
Daniel DiClemente
North Chili, NY
Shannon S. Douvier
St. Cloud, MN
Denise Duncan
San Dimas, CA
Rick G. Eilander
Des Moines, IA
Craig A. Ford
Newark, NJ
Henry A. Garrido
New York, NY
R. Sean Grayson
Worthington, OH
Vicki Hall
Tallahassee, FL
J. David Henderson
Harrisburg, PA
Johanna Puno Hester
San Diego, CA
Kathryn Lybarger
Oakland, CA
Roberta Lynch
Chicago, IL
Christopher Mabe
Westerville, OH
Patrick Moran
Baltimore, MD
Douglas Moore Jr.
San Diego, CA
Michael Newman
Chicago, IL
Debbie Parks
Hamilton, NJ
Randy Perreira
Honolulu, HI
Steven Quick Sr.
Indianapolis, IN
José Ramirez
San Juan, PR
Lawrence A. Roehrig
Lansing, MI
Joseph P. Rugola
Columbus, OH
Alan F. Shanahan
Los Angeles, CA
Paul Spink
Milwaukee, WI
Mary E. Sullivan
Albany, NY
Tom Tosti
Plymouth Meeting, PA
Anthony Wells
New York, NY
Mike Yestramski
Olympia, WA

October 3, 2023

United States Senate
Washington, D.C. 20510

Dear Senator:

On behalf of the 1.4 million members of the American Federation of State, County and Municipal Employees (AFSCME), I urge you to support the nomination of Magistrate Judge Mustafa Kasubhai to the United States District Court for the District of Oregon.

It is vital to appoint federal judges whose careers show an understanding of and a dedication to workers' rights, and whose backgrounds reflect the racial, ethnic and cultural diversity of our country. Confirming Kasubhai will help achieve those crucial goals. His appointment will help ensure that workers and their families, not just the wealthy and privileged, receive the equal justice they deserve.

Kasubhai is a lawyer with a background in workers' rights whose past work includes representing working people in workers' compensation cases, representing a local labor union, and for the last 20 years as the labor member of the Oregon Workers' Compensation Board, as a state court judge, and since 2018 as a Federal Magistrate Judge in Eugene, Oregon.

Additionally, if confirmed, Kasubhai will be the only Muslim American Article III judge west of New York and New Jersey, the first in the Ninth Circuit, and he will be the first South Asian U.S. District Judge in Oregon. As the child of Indian immigrants, Kasubhai deeply understands the need for diverse representation, both demographically as well as professionally, particularly in our judiciary, so that all Americans can see themselves reflected at all levels of government and on the federal bench.

There are far too few judges with labor law experience on the federal bench and even fewer union attorneys. It is past time that we nominate and confirm more judges who have deep labor experience and a history of understanding and representing working

American Federation of State, County and Municipal Employees, AFL-CIO
TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 L Street, NW, Washington, DC 20036-5687

#320-23

people. Kasubhai's lived experiences and deep understanding of the law, regulations and rules make him uniquely qualified for this position. AFSCME is committed to supporting Kasubhai throughout the confirmation process and we look forward to working with you to achieve a federal judiciary that will be both brilliant and diverse. Confirming Judge Mustafa Kasubhai is one big step in that direction.

Sincerely,



Edwin S. Jayne
Director of Federal Government Affairs

ESJ:AT:ei

The Leadership Conference
on Civil and Human Rights

1620 L Street, NW
Suite 1100
Washington, DC
20036

202.466.3311 voice
202.466.3435 fax
www.civilrights.org

October 3, 2023

The Leadership Conference

SUPPORT THE CONFIRMATION OF JUDGE MUSTAFA KASUBHAI TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF OREGON

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 240 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we write to express our strong support for the confirmation of Judge Mustafa Kasubhai to the U.S. District Court for the District of Oregon. The Leadership Conference intends to include your position on the confirmation of Judge Kasubhai in our voting record for the 118th Congress.

Judge Kasubhai's distinguished career and commitment to equity and inclusion make him a wonderful choice for this position. Since 2018, Judge Kasubhai has served as a fair-minded U.S. magistrate judge with the U.S. District Court for the District of Oregon. Prior to this, he spent 11 years as a state circuit court judge with the Oregon Judicial Department. Before his appointment to the bench, he served as a board member on the Oregon Workers' Compensation Board. Judge Kasubhai spent a year as a commissioner of the City of Eugene Human Rights Commission and another year as a landlord-tenant mediation coordinator with Lane County Legal Aid. He spent time in private practice as an associate with Rasmussen, Tyler & Mundorff and as a partner with Kasubhai & Sanchez. He was also a solo practitioner at the Law Offices of Mustafa T. Kasubhai, PC. Judge Kasubhai has worked to train future lawyers as a lecturer at the University of Oregon School of Law. He is a graduate of the University of California, Berkeley and the University of Oregon School of Law. Additionally, Judge Kasubhai is also very involved in his community. For example, he — along with others — founded the South Asian Bar Association of Oregon and the Oregon Muslim Bar Association.[1] He also co-founded the Oregon Mediator Diversity Project, which mentors and trains diverse attorneys looking to become mediators.[2] Judge Kasubhai's experience makes him eminently qualified to serve as a district court judge.

Judge Kasubhai's career has been steeped in defending and protecting the rights of working people. While in private practice, he specialized in representing injured workers before the Oregon Workers' Compensation Board (WCB), often securing settlements for his clients. In 2003, Judge Kasubhai was nominated by Governor Theodore Kulongoski and confirmed by the Oregon Senate to serve as a board member on the WCB. In this role, Judge Kasubhai reviewed all workers' compensation claims that had been appealed from an administrative law judge. Judge Kasubhai's depth of experience has prepared him well for this role.

Further, his rulings as a magistrate judge have shown that he is a fair-minded jurist. For example, he presided over a settlement against the City of Springfield Police Department (SPD) for use of excessive

[1] *Board of Directors*, South Asian Bar Association of Oregon (accessed September 2023).
[2] *About Us*, Oregon Mediation Diversity Project (accessed September 2023).

force, which resulted in the largest monetary settlement of its kind in Oregon and a change to the SPD's use of force policy.[3] In another case, he ruled in favor of a student who had been discriminated against by her college professors because of the student's former job as a sex worker.[4] He also allowed a claim to move forward that was brought by a transgender woman who was incarcerated after the prison denied her access to gender-affirming care.[5] These are only a handful of cases that demonstrate Judge Kasubhai's even-handed application of and commitment to the rule of law.

Importantly, Judge Kasubhai has already demonstrated that in his courtroom all litigants will be treated with respect. He introduced courtroom rules and practices, asking all who appear before him to identify their pronouns,[6] and he and his staff include their own pronouns in their email signatures and electronic filings. Further, he developed a guide of best practices for judges — titled "Pronouns in the Courts" — about how to make courtrooms more inclusive.[7] With the unprecedented number of anti-LGBTQ bills being introduced at all levels of government — with a particular emphasis on anti-transgender legislation — more cases involving LGBTQ litigants are being heard by our courts than ever before.[8] By normalizing the simple practice of asking for people's pronouns, Judge Kasubhai is breaking down an important barrier by treating all litigants with dignity and respect. Our courts should be safe and accessible for all people, and Judge Kasubhai has shown that he is committed to making our judiciary more inclusive.

Judge Kasubhai has been breaking barriers for his entire judicial career, and his confirmation to the U.S. District Court for the District of Oregon would also mark a significant and overdue milestone. When he was appointed as a magistrate judge for the District of Oregon in 2018, he became the first Muslim judge to ever serve as a federal officer.[9] If confirmed to this position, Judge Kasubhai would be the only Muslim Article III judge on this court and only the third in the entire country.[10] Additionally, if confirmed to this position, he would be the only AAPI judge to ever serve a lifetime appointment on the District of Oregon.[11] Public trust in our judiciary is vital, and to further strengthen this trust our courts must reflect

---

[3] *Estate of Stacy Kenny v. City of Springfield*, No. 6:19-cv-01519-AA (2020); *see also* Jayati Ramakrishnan, *City of Springfield pays $4.55 million to family of woman killed by police, in record settlement*, THE OREGONIAN (July 17, 2020).
[4] *Gililland v. Sw. Or. Cmty. Coll. Dist*., 6:19-cv-00283-MK (D. Or. Dec. 3, 2021)
[5] *Lewis v. Ives*, No. 3:18-cv-00184-MK (S. Or. Feb. 12, 2020).
[6] U.S. Magistrate Judge Mustafa T. Kasubhai, *Courtroom Rules*, U.S. District Court, District of Oregon (accessed September 2023).
[7] Judge Mustafa T. Kasubhai, *Pronouns in the Courts*, U.S. District Court, District of Oregon (October 13, 2022).
[8] *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures*, American Civil Liberties Union (accessed September 2023).
[9] Maxine Bernstein, *Biden nominates Magistrate Judge Mustafa Kasubhai to serve as federal district judge in Oregon*, THE OREGONIAN (September 7, 2023); Julia Shumway, *Biden names Oregon magistrate to federal judge vacancy*, OREGON CAPITAL CHRONICLE (September 7, 2023); Emily Rogers, *A Commitment to the Struggle*, DAILY EMERALD (May 22, 2023).
[10] *See e.g.*, Azi Paybarah, *U.S. Senate Confirms First Muslim Federal District Judge*, NEW YORK TIMES (June 11, 2021); Lola Fadulu, *First Muslim Woman to Be Federal Judge Confirmed by Senate*, NEW YORK TIMES (June 16, 2023).
[11] *See Biographical Directory of Article III Federal Judges, 1789-present*, FEDERAL JUDICIAL CENTER (accessed September 2023).

the diverse communities they serve.[12] Judicial decision-making is also improved by this personal and professional diversity.[13] The confirmation of Judge Kasubhai would be an important step towards ensuring that our federal courts reflect and represent the diversity of our nation.

Judge Kasubhai is an excellent choice for this position, and we strongly urge the Senate to confirm him to the U.S. District Court for the District of Oregon. If you would like to discuss this matter further, please contact Lena Zwarensteyn, senior director of the fair courts program, at (202) 466-3311. Thank you for your consideration.

Sincerely,

Maya Wiley
President & CEO

Jesselyn McCurdy
Executive Vice President of Government Affairs

[12] Maya Sen, *Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time*, 2017 WIS. L. REV. 367 (2017).
[13] Kate Berry, *Building a Diverse Bench: Selecting Federal Magistrate and Bankruptcy Judges*, BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW AND AMERICAN BAR ASSOCIATION JUDICIAL DIVISION (2017).



October 4, 2023

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Graham, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way enthusiastically supports the nomination of U.S. Magistrate Judge Mustafa Kasubhai to be a federal district court judge in the District of Oregon. He has a demonstrated record of commitment to the legal rights and dignity of all people, not just the wealthy and powerful. He will also help diversify the federal bench by becoming the nation's third Muslim Article III judge.

Judge Kasubhai dedicated the first phase of his career to representing injured workers. Soon after graduating from the University of Oregon School of Law in 1996, he began his years of practice before the Oregon Workers' Compensation Board (WCB). Both as a solo practitioner and at law firms, he litigated before the WCB and state courts on behalf of individuals who had experienced work-related injuries. His practice also included employment discrimination cases involving retaliation against employees for filing compensation claims. In addition, he represented plaintiffs in personal injury cases.

Judge Kasubhai shifted his practice in 2003, becoming a member of the Workers' Compensation Board. In this capacity, he reviewed workers' compensation appeals of administrative law judges' final orders for all work-related claims in the state (except for those involving federal jurisdiction).

In 2007, Gov. Theodore Kulongoski appointed Judge Kasubhai to serve as an Oregon State Circuit Court judge in Lane County. Over the course of the next decade, Kasubhai presided over more than 500 trials in a wide variety of state civil, criminal, family, and juvenile cases.

In 2018, the federal district court judges in Oregon selected him to be a federal magistrate judge. Judge Michael McShane noted that there were "over 54 applicants for the position, but … Judge Kasubhai's experience, his demeanor, his respect in the community, and his intellect … were unparalleled."[i] This was a vote of confidence in Kasubhai by judges in the same court he has been nominated to join.

In his five years as a magistrate judge, Judge Kasubhai has handled more than 250 cases involving a wide variety of federal issues. For instance, he ruled that a small church whose permit to build a residence for its pastor was revoked when neighbors complained had a cause of action under the Religious Land Use and Institutionalized Persons Act. The case involved

1101 15th Street, NW ♦ Suite 600 ♦ Washington, DC 20005
Telephone 202.467.4999 ♦ Fax 202.293.2672 ♦ E-mail pfaw@pfaw.org ♦ Web site http://www.pfaw.org

complex questions of whether the case's history in state court divested the federal court of jurisdiction.[ii] He also heard the case of Larissa White, a police officer who was fired after the chief of police discovered she had been keeping a written log of department policy violations. Kasubhai ruled that this raised First Amendment concerns such that the case should not be dismissed, and the parties eventually reached a settlement.[iii]

When Judge Kasubhai became a magistrate judge in 2018, he was the first Muslim judge of any type within the federal judiciary. He has written about his experience of Islamophobia and the societal importance of having a Muslim federal magistrate: "[I]f I'm here long enough and you get to see me on the bench often enough, my presence might help to dissemble images that serve to demonize millions of people."[iv]

Judge Kasubhai's background has informed his work as a lawyer. When he moved to Oregon for law school in the early 1990s, he found himself a person of color in a state with little racial diversity and with few other Muslims. He committed himself to a lifetime of conversations with his fellow Oregonians to bridge the gaps between people with different backgrounds, especially in the legal community.

Judge Kasubhai understands that two people might have different perceptions of the same events based on their different life experiences. He encourages people in the legal community to have personal conversations with each other to address discrimination. He has urged those who have not experienced discrimination to be open to hearing from those who have. "Once we can accept someone else's experience [of discrimination] as valid, then we can have an uncomfortable and hopefully productive conversation that might start breaking down barriers. Then, and only then, can we include more voices that are not our own in [the legal] profession."[v]

This is the kind of wisdom that makes for an excellent judge.

Judge Kasubhai has assisted in creating training material to help judges become aware of the impact of unconscious bias of all types in the legal system.[vi] He has written that recognizing this bias "gives us the capacity to correct for it, and then leads to better and informed decisions."[vii]

Judge Kasubhai has earned the respect and admiration of the legal community. Last year, he earned the Wallace P. Carson, Jr., Award for Judicial Excellence from the Oregon State Bar. The award is given for significant contributions to the judicial system by a current or retired state court judge or federal judge who is a model of professionalism, integrity, and judicial independence. When the award was announced, the dean of the University of Oregon College of Law explained how Kasubhai's presence in the court enhances the judicial system:

> [P]arties that appear before Judge Kasubhai know they are being heard, respected and valued. They receive their "day in court" in a manner that enhances faith in the judicial system and in the rule of law, and that fact holds true whether the litigant is pro se or a multi-million dollar corporation.[viii]

U.S. Magistrate Judge Mustafa Kasubhai has the experience, principles, and wisdom needed to make an excellent federal judge. We urge his prompt confirmation.

Sincerely,



Marge Baker
Executive Vice President

---

[i] Investiture of Hon. Mustafa T. Kasubhai, U.S. District Court for the District of Oregon, Eugene, Oregon, p. 9.
[ii] *Coles Valley Church v. Oregon Land Use Board of Appeals*, 2020 U.S. Dist. LEXIS 199089.
[iii] *White v. Taylor*, 2020 U.S. Dist. LEXIS 174457.
[iv] "Is There a Place For Us? On Being a Muslim American in Oregon's Legal Community," Sarah Malik and Mustafa Kasubhai, Oregon State Bar Bulletin (Feb. / March 2021), https://www.osbar.org/bulletin/issues/2021/2021FebruaryMarch/index.html?page=18.
[v] Id.
[vi] Oregon Implicit Bias Training Video, Committee on Bias in the Justice System in Oregon, Portland, Oregon. Video available at https://www.youtube.com/watch?v=BA-z4mS_Evg&t=5s.
[vii] "Is There a Place For Us," above.
[viii] "Celebrating Oregon Lawyers," Oregon State Bar Bulletin, October 2022, p. 29, https://www.osbar.org/bulletin/issues/2022/2022October/offline/download.pdf.

SEIU
Stronger Together

October 4, 2023

Re: Endorsement for Magistrate Judge Mustafa T. Kasubhai for District Court Judge, District of Oregon

Dear Members of the Committee:

As General Counsel of the Service Employees International Union, I write to offer SEIU's strongest possible support for the confirmation of Magistrate Judge Mustafa T. Kasubhai, nominated for the vacancy for district court judge for the District of Oregon.

Magistrate Judge Kasubhai is eminently qualified. While in private practice, he represented working people across Oregon in a wide variety of cases and contexts. More recently, he has devoted the last twenty years to public service, first as the labor member of the Oregon Workers' Compensation Board, later as a state court judge, and then as a federal magistrate judge sitting in Eugene, Oregon. In the latter capacity, Judge Kasubhai has already handled much of the work that comes before a federal district court, and he has demonstrated an excellent judicial temperament, striking intellect, and evenhanded approach in addressing the matters before him.

If he is confirmed, Judge Kasubhai will also bring diversity to the bench in a number of ways. He is the son of South Asian immigrants and a Muslim. He will be the first South Asian and the first Muslim Article III judge in Oregon.

We strongly urge you to confirm Magistrate Judge Mustafa Kasubhai for the district court vacancy in Oregon. He is extremely well-qualified, and we are confident he will provide fair and equal justice to all who come before him. He will also add important diversity to the federal bench in Oregon in numerous ways based upon his work experience and personal background.

Sincerely,

Steven K. Ury

General Counsel, Service Employees International Union

MARY KAY HENRY
International President

APRIL VERRETT
International Secretary-Treasurer

NEAL BISNO
Executive Vice President

JOSEPH BRYANT
Executive Vice President

HEATHER CONROY
Executive Vice President

LESLIE FRANE
Executive Vice President

ROCIO SÁENZ
Executive Vice President

SERVICE EMPLOYEES
INTERNATIONAL UNION
SOC, CLC

1800 Massachusetts Ave., NW
Washington, DC 20036

202.730.7000

www.SEIU.org



PRESIDENT
RAKIM BROOKS
CHAIR
PAULETTE MEYER

October 6, 2023

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing more than 150 public interest and civil rights organizations, I am delighted to write in support of the confirmation of United States Magistrate Judge Mustafa T. Kasubhai to the United States District Court for the District of Oregon.

A former litigator with a long record of public service, Judge Kasubhai will bring key professional and demographic diversity to our courts. He will be the first Muslim American on the Oregon District Court and only the third Muslim judge to serve on a federal district court. Moreover, he will be one of just a few federal judges with plaintiff-side labor law experience.

A graduate of the University of California at Berkeley and the University of Oregon School of Law, Judge Kasubhai began his legal career in plaintiff-side labor law at the Law Offices of Rasmussen, Tyler & Mundorff. He then co-founded a firm, Kasubhai & Sánchez, where he continued that work. In 2000, Judge Kasubhai went into solo, private practice, focusing on Oregon workers with employment discrimination, workers' compensation, and tort law grievances.

In 2003, Judge Kasubhai went from practicing before the Workers' Compensation Board to serving on that board. Four years later, he was nominated by Governor Ted Kulongoski to serve on the Oregon State Circuit Court. As a state court judge, Judge Kasubhai presided over more than 500 trials covering diverse state law issues. In 2018, Judge Kasubhai was selected by the U.S. District Court for the District of Oregon to serve as a federal magistrate judge for that court.

Judge Kasubhai has received recognition both nationally and at home in Oregon. In 2018, he was awarded the Daniel K. Inouye Trailblazer Award by the National Asian Pacific American Bar Association for "displaying tenacity, vision, creativity, and courage." The Oregon Asian Pacific American Bar Association awarded Judge Kasubhai the Justice Lynn Nakamoto Trailblazer

Award in 2018 while in 2022 the Oregon State Bar conferred on him the Wallace P. Carson, Jr. Award for Judicial Excellence. These accolades testify to the significance and extent of Judge Kasubhai's contributions to the field of law.

We urge your office to ensure the Senate moves quickly to confirm Judge Kasubhai. Judge Kasubhai will not just make history in Oregon by joining the district court but will secure to Oregonians an experienced, knowledgeable jurist with deep ties to the community.

Sincerely,



Rakim Brooks

President, Alliance for Justice

Eleven Dupont Circle NW, Suite 500 | Washington, DC 20036 | www.afj.org | t:202-822-6070

Field Offices

Dallas | Houston | Los Angeles | San Francisco

MUSLIM AMERICAN JUDICIAL ADVISORY COUNCIL

October 11, 2023

United States Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

We write to you as members of the Muslim American Judicial Advisory Council ("MAJAC" or "Council")[1] – a national council of leading Muslim-American lawyers seeking to ensure greater representation of qualified Muslim American candidates in the judiciary – to urge that you confirm Magistrate Judge Mustafa Kasubhai for the position of District Court Judge for the U.S. District Court for the District of Oregon.

Judge Kasubhai is a proud Oregonian. He graduated from the University of Oregon School of Law, where he was the President of the Student Bar Association. He has practiced exclusively in Oregon, starting off his career in private practice and then moving into public service first as a member of the Oregon Workers' Compensation Board, then as an Oregon State Circuit Court Judge, and now as a Federal Magistrate Judge in the U.S. District Court for the District of Oregon.

His deep commitment to public service, his track record of excellence, and the diversity of his legal experiences make Judge Kasubhai uniquely suited to be a U.S. District Court Judge. As a judge, he has demonstrated a steadfast and unflinching commitment to the U.S. Constitution, the rule of law, and the administration of equal justice under the law. Last year, the Oregon State Bar recognized his accomplishments by awarding him with their Judicial Excellence Award. He is also the recipient of the National Asian/Pacific-American Bar Association's Daniel K. Inouye Trailblazer Award, and the Oregon Asian/Pacific-American Bar Association's Justice Lynn Makamoto Trailblazer Award.

Judge Kasubhai's nomination as the first Muslim-American on the federal bench in the entire Ninth Circuit would resonate both within Oregon and nationally. His

[1] MAJAC is supported by the Muslim Bar Association of New York ("MuBANY"), the Capitol Area Muslim Bar Association ("CAMBA"), and America Indivisible. All MAJAC members serve in their individual capacities and not on behalf of any particular entity, and titles are listed for identification purposes only.

MUSLIM AMERICAN JUDICIAL ADVISORY COUNCIL

nomination would help to correct the long-standing lack of representation of Muslim Americans on the federal bench. We currently have only *two* Muslim American on the federal bench out of all *870* Article III judgeships nationally, a gross under-representation of Muslim Americans as compared to their percentage of the national population.

Confirming Judge Kasubhai not only makes sense on the merits of his qualifications and his stature within the Oregon legal community, but it would also make a significant impact nationally on the urgent need to ensure that the federal bench reflects the true diversity of American society.

We hope that this letter of support for Judge Kasubhai assists you in considering his nomination. We urge his quick confirmation.

Sincerely,

Muslim American Judicial Advisory Council

Rahmah Abdulaleem, President-Elect, National Association of Muslim Lawyers

Amir Ali, Executive Director of the MacArthur Justice Center and Director of the Criminal Justice Appellate Clinic at Harvard Law School

Keith Ellison, Attorney General of the State of Minnesota

Intisar Rabb, Professor of Law, Professor of History, and faculty director of the Program in Islamic Law at Harvard Law School

Zaid A. Zaid, former Special Assistant to President Obama and Associate White House Counsel

Adnan Zulfiqar, Associate Professor of Law at Rutgers Law School

CHAIR
Hon. Ann Claire Williams (Ret.)
acwilliams@jonesday.com
(312) 269-1575

VICE CHAIR
David L. Brown
Dlbrown@hmrlawfirm.com
(515) 244-2141

FIRST CIRCUIT
Kay H. Hodge
khodge@scmllp.com
(617) 542-6789

SECOND CIRCUIT
Dana M. Hrelic
dhrelic@pullcom.com
(860) 424-4382

THIRD CIRCUIT
G. Glennon Troublefield
gtroublefield@carellabyrne.com
(973) 994-1700

FOURTH CIRCUIT
Pamela J. Roberts
Pamela.Roberts@bowmanandbrooke.com
(803) 726-7420

FIFTH CIRCUIT
Michael D. Hunt
Michael.hunt@phelps.com
(225) 346-0285

SIXTH CIRCUIT
Khaliliah V. Spencer
kspencer@honigman.com
(313) 465-7654

SEVENTH CIRCUIT
Nigel F. Telman
ntelman@proskauer.com
(312) 962-3548

EIGHTH CIRCUIT
Sonia Miller-Van Oort
Soniamv@sapientialaw.com
(612) 756-7125

NINTH CIRCUIT
John C. Dwyer
dwyerjc@cooley.com
(650) 843-5228

Eric S. Casher
ecasher@meyersnave.com
(510) 808-2000

TENTH CIRCUIT
Jennifer H. Weddle
Weddlej@gtlaw.com
(303) 572-6500

ELEVENTH CIRCUIT
Suzanne E. Gilbert
Suzanne.Gilbert@hklaw.com
(407) 244-1142

D.C. CIRCUIT
Michael L. Huang
mhuang@ipmlaw.com
(734) 678-1531

FEDERAL CIRCUIT
Joseph Michael Drayton
Jdrayton@cooley.com
(212) 479-6000

SPECIAL ADVISORS
Peter Bennett
pbennett@thebennettlawfirm.com
(207) 831-9999

Vincent Chang
vchang@wmd-law.com
(212) 382-3300

Susan Saltzstein
Susan.Saltzstein@skadden.com
(212) 735-4132

STAFF COUNSEL
Denise A. Cardman
Denise.Cardman@Americanbar.org

AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
Hon. Ann Claire Williams (Ret.)
Jones Day
110 North Wacker Drive, Suite 4800
Chicago, Illinois 60606
acwilliams@jonesday.com

October 3, 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 Mustafa T. Kasubhai to the United States District Court for the District of Oregon

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 Mustafa T. Kasubhai, who has been nominated by the President to the United States District Court for the District of Oregon. 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 Kasubhai is **"Well Qualified"** to serve on the United States District Court for the District of Oregon. One committee member abstained from voting.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Magistrate Judge Mustafa T. Kasubhai (*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*)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   John Andrew Kazen

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

   United States District Judge for the Southern District of Texas

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 Southern District of Texas
   1300 Victoria Street, Suite 2317
   Laredo, TX 78040

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

   1964; Lincoln, Nebraska

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

   1987 – 1990, University of Houston Law Center; J.D., 1990

   1983 – 1987, University of Texas at Austin; B.A., 1987

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

   2018 – present
   United States District Court, Southern District of Texas – Laredo Division
   1300 Victoria Street, Suite 2317
   Laredo, Texas 78040
   United States Magistrate Judge

1997 – 2018
Kazen, Meurer & Pérez, L.L.P.
211 Calle del Norte
Laredo, Texas 78041
Partner

1991 – 1997
Kemp, Smith, Duncan & Hammond, P.C.
221 North Kansas, Suite 1700
El Paso, Texas 79901
Partner (1996 – 1997)
Associate (1991 – 1996)

1990 – 1991
United States District Court for the Eastern District of Texas
211 West Ferguson Street
Tyler, Texas 75702
Law Clerk to the Honorable Robert M. Parker

Summer 1989
Kemp, Smith, Duncan & Hammond, P.C.
221 North Kansas, Suite 1700
El Paso, Texas 79901
Summer Associate

Summer 1989
Cox & Smith (now Dykema)
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205
Summer Associate

Summer 1989
Russell L. Cook, Jr. & Associates
1401 McKinney, Suite 1800
Houston, Texas 77010
Summer Associate

Summer 1988
Jamail & Kolius
500 Dallas Street, Suite 3434
Houston, Texas 77002
Summer Associate

Summer 1988
Harry Gee, Jr. & Associates
5847 San Felipe, Suite 2950

Houston, Texas 77057
Summer Associate

1984 – 1987
Fresh Plus Grocery
1221 West Lynn Street
Austin, Texas 78703
Grocery store stocker and cashier

Summer 1983
The Laredo National Bank (now PNC Bank)
700 San Bernardo Avenue
Laredo, Texas 78040
Cashier

Other Affiliations (Uncompensated):

2017 – present
Bethany House of Laredo, Inc.
817 Hidalgo Street
Laredo, Texas 78040
Board Member

2010 – present
Border Olympics, Inc.
c/o Hector Garcia, Treasurer
2502 O'Kane
Laredo, Texas 78041
Board Member

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

   I did not serve in the military. I registered for the selective service when I turned 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.

   Border Olympics, Inc., Recipient of the Mule Frazier Award for Outstanding Track and Field Volunteer (2018)

   LexisNexis Martindale-Hubbell AV® Preeminent™ Peer Review Rated (2011)

Webb County Bar Association, Recipient of the Award of Merit in Recognition of Outstanding Service (1999)

The Houston Journal of International Law Certificate of Merit for Outstanding Service (1990)

D.D. Hachar Charitable Trust Fund Scholarship (1983)

Minnie Stevens Piper Foundation Scholars Program Four-Year Scholarship (1983)

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 – 2017)

American Board of Trial Advocates, Laredo Chapter, Member (2011 – 2018)
Secretary (2011, 2018)
Vice-president (2012)
President-elect (2013 – 2015)
President (2016 – 2017)

Bar Association of the Fifth Federal Circuit (2008 – 2018)

The College of State Bar of Texas (1997 – 2001)

Council of School Attorneys (1997 – 2018)

Defense Research Institute (1997 – 2018)

El Paso Bar Association (1991 – 1996)

Federal Magistrate Judges Association (2018 – present)

Laredo-Webb County Bar Association (1997 – 2018)

National Diocesan Attorneys Association (2003 – 2018)

Red Mass Planning Committee, Member (1997– present)
Co-chair (2018 – present)

State Bar of Texas, Member (1991 – present)
Administration Committee, Chair (2013 – 2014)
Business Law Section, Advisor (2013 – 2014)
CLE Committee, Advisor (2011–2012)
Client Security Fund Committee, Vice-Chair (2012 – 2013)

Committee Review Taskforce, Member (2012 – 2013)
Consumer & Commercial Law Section, Advisor (2011 – 2012)
Construction Law Section, Advisor (2012 – 2013)
District 12-A Grievance Committee, Member (2000 – 2006)
Executive Committee, Member (2012 – 2014)
Executive Director Evaluation Subcommittee, Member (2014)
Law Focused Education Committee, Member (2014 – 2015)
Litigation and Contracts Committee, Member (2012 – 2013)
MCLE Committee, Advisor (2012 – 2014)
Professional Development Program Committee, Member (2011 – 2013)
Technology Oversight Committee, Member (2011 – 2012)
Texas State Bar Board of Directors, District 12 Director (2011 – 2014)
Unauthorized Practice of Law Committee, Chair (2012 – 2013)

Texas Association of Defense Counsel (1997 – 2018)

Texas Bar Foundation, Fellow (2014 – present)

U.S. District Court for the Southern District of Texas
Magistrate Judge Committee (2023 – present)
Security Committee (2019 – 2023)

10. **Bar and Court Admission**:

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

New Mexico, 1995
Texas, 1991

There have been no lapses in membership, but I have been on inactive status in New Mexico since 1998.

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, 2008
United States District Court for the Southern District of Texas, 1997
United States District Court for the Western District of Texas. 2011

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.

Bethany House of Laredo, Inc., Board Member (2017 – present)

Border Olympics, Inc., Board Member (2013 – present)

Daybreak Rotary Club (1999 – 2003)

University of Texas Exes (1983 – present)

U.S.A. Track & Field Association, Certified Track Official (2015– 2018)

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

To the best of my knowledge, none of the above organizations currently discriminates on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies. To the best of my knowledge, only one of the organizations listed above previously discriminated on the basis of sex—the Rotary Club. In 1989 Rotary International amended its constitution to open membership to all sexes. Therefore, any discriminatory policy or practice against the admission of women was eliminated prior to the time of my membership in the local Rotary club.

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

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

With J. Francisco Tamez, *Motions to Abate and Motions to Stay; Pleas to the Jurisdiction; Motions on Special Appearance*, in Ultimate Motions Practice (State Bar of Texas, Sept. 20, 2013). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

During my service as a director on the State Bar of Texas Board of Directors from 2011 to 2014, I attended the following meetings of the board, for which minutes are supplied. At those meetings, the board generally considered and took action on matters relating to the legal profession and legal services for the public.

State Bar of Texas, Board of Directors Meeting, June 25, 2014.

State Bar of Texas, Board of Directors Meeting, April 25, 2014.

State Bar of Texas, Board of Directors Meeting, January 24, 2014.

State Bar of Texas, Board of Directors Meeting, June 20, 2013.

State Bar of Texas, Board of Directors Meeting, June 19, 2013.

State Bar of Texas, Board of Directors Meeting, April 12, 2013.

State Bar of Texas, Board of Directors Meeting, January 25, 2013.

State Bar of Texas, Board of Directors Meeting, September 21, 2012.

State Bar of Texas, Board of Directors Meeting, June 14, 2012.

State Bar of Texas, Board of Directors Meeting, June 13, 2012.

State Bar of Texas, Board of Directors Meeting, April 13, 2012.

State Bar of Texas, Board of Directors Meeting, January 20, 2012.

State Bar of Texas, Board of Directors Meeting, September 16, 2011.

State Bar of Texas, Board of Directors Meeting, June 23, 2011.

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.

During my time as an attorney, my law firm represented the Laredo College from

about 2005 through the date I left the firm in 2018. During that time, I attended a few meetings of the college's board of trustees, but I do not recall the dates of the meetings. I am unable to obtain any transcripts, or recordings of those meetings.

As an attorney, I was also outside general counsel to the Laredo Independent School District from October 1997 to June 2018. During that time, I attended almost all the public regular monthly board meetings, special call meetings, and board workshops of the school district's board of trustees. After a thorough search of publicly available records, I am supplying copies of minutes of the board meetings for the following time periods:

January 2018 – June 2018
January 2017 – December 2017
January 2016 – December 2016
January 2015 – November 2015
February 2014 – December 2014
June 2013
July, August, November, and December 2012
January 2009 – June 2009
January 2008 – December 2008
January 2007 – December 2007
January 2006 – December 2006
January 2005 – December 2005
March 2004 – December 2004
January 2003 – April 2003
January 2002
December 2001
January 1998 – November 1998

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.

Based upon my recollection and a thorough review of my files and searches of publicly available databases and the Internet, I have identified the following responsive materials, but it is possible that there are a few that I have been unable to recall or identify.

April 20, 2023: Panelist, Criminal Justice Act Panel Training, Federal Public Defender for the Southern District of Texas, Laredo, Texas. Presentation supplied.

February 17, 2023: Speaker, Advanced Legal Writing Class, St. Mary's School of Law, San Antonio, Texas. I was a guest speaker and discussed the roles and responsibilities of law clerks and reviewed selected Federal Rules of Civil Procedure which the students are likely to encounter as law clerks. I have no notes, transcript, or recording. The address for St. Mary's School of Law is One Camino Santa Maria, San Antonio, Texas 78228.

November 19, 2018: Speaker, Laredo Federal Courthouse Naming Ceremony, Laredo, Texas. Notes supplied.

2018 – present: Speaker, Naturalization Ceremonies, United States District Court for the Southern District of Texas, Laredo, Texas. As part of my duties as a magistrate judge, I preside over naturalization ceremonies for new citizens and have conducted ceremonies on the following dates: May 5, 2023; February 2, 2023; September 9, 2022; July 14, 2022; September 4, 2020; March 12, 2020; January 10, 2020; November 1, 2019; September 5, 2019: September 4, 2019; July 2, 2019; November 2, 2018; September 6, 2018; July 20, 2018. The notes I use for each ceremony are supplied. Press coverage of one ceremony supplied and video available at https://www.kgns.tv/content/news/Naturalization-ceremony-488747791.html.

March 23, 2018: Speaker, Recognizing and Preventing Sexual Harassment. Harris County Department of Education School Finance Council, Houston, Texas. Video available at https://www.youtube.com/watch?v=dt0__mZl0F4.

February 1, 2018: Speaker, Board of Trustees Training, Texas Open Meetings Act and Walking Quorums, The Laredo Independent School District, Laredo, Texas. Presentation supplied.

April 7, 2017: Speaker, School District Employment Contracts and Negotiations and Settlement Strategies. Harris County Department of Education School Finance Council, Houston, Texas. Video available at https://www.youtube.com/watch?v=h0sShrcNoJo.

October 29, 2016: Speaker, Board Training, Team Building, and Related Issues, The Laredo Independent School District, Laredo, Texas. Presentation supplied.

November 6, 2015: Speaker, Understanding the Rule Against Gifts of Public Funds and Department of Labor Investigations and Overtime Violations. Harris County Department of Education School Finance Council, Houston, Texas. Video available at https://www.youtube.com/watch?v=liF7nUdkiK0.

January 16, 2015: Speaker, Contract Liability and Immunity Issues. Harris County Department of Education School Finance Council, Houston, Texas. Video available at https://www.youtube.com/watch?v=3UXe7-WPtMk.

January 17, 2015: Speaker, Overview of Legal Issues for Trustees, The Laredo Independent School District, Laredo, Texas. Presentation supplied.

September 28, 2014: Speaker, Suspension without Pay: Procedures and Issues Related to Contract Terminations, Texas Association of School Boards, Texas Council of School Attorneys, Austin, Texas. Presentation supplied.

May 1, 2014: Speaker, Young Women's Leadership Conference, Texas A&M International University, Laredo, Texas. Notes supplied.

2013 (specific date unknown): Speaker, The Role of the Board Member in School District Governance, The Laredo Independent School District, Laredo, Texas. Presentation supplied.

November 8, 2013: Speaker, Drafting Disciplinary Documentation and Purchasing Law for School Districts, Harris County Department of Education School Finance Council, Houston, Texas. Notes supplied.

September 20, 2013: Speaker, Motions to Abate and Motions to Stay; Pleas to the Jurisdiction; Motions on Special Appearance, State Bar of Texas, Ultimate Motions Practice Seminar, Austin, Texas. Notes supplied.

February 14, 2013: Speaker, Reducing Legal Risk in School District Contracts. Harris County Department of Education School Finance Council, Houston, Texas. Notes supplied.

July 3, 2012: Co-speaker, What Every Lawyer Needs to Know About Texas Unemployment Law, State Bar of Texas Webcast, Austin, Texas. Notes supplied.

March 2011 (specific date unknown): Speaker, State Bar of Texas District 12 Director Candidate Speech, Hidalgo County Bar Association luncheon, McAllen, Texas. Notes supplied.

December 2, 2010: Speaker, Governance: The Board Member's Role, The Laredo Independent School District, Laredo, Texas. Presentation supplied.

November 5, 2010: Speaker, Ethical Issues for Counselors, Border Counseling Association, Laredo, Texas. Notes supplied.

2009 (specific date unknown): Speaker, Open Meetings: Agenda Items and Executive Session, The Laredo Independent School District, Laredo, Texas. Presentation supplied.

November 20, 2009: Speaker, Counselor Ethics and Current Events, Border Counseling Association, Laredo, Texas. Notes supplied.

October 6, 2009: Speaker, Introduction of Speaker Judge George P. Kazen, Ninth Annual Red Mass Ceremony, San Agustín Cathedral, Laredo, Texas. I introduced my father as the guest speaker and discussed his background, upbringing, and philosophy. I have no notes, transcript, or recording. The address of the Diocese of Laredo is 1901 Corpus Christi Street, Laredo, Texas 78043.

October 24, 2008: Speaker, Ethical and Legal Issues for School Counselors, Border Counseling Association, Laredo, Texas. Notes supplied.

October 20, 2008: Speaker, Purchasing Law for School Districts, Harris County Department of Education School Finance Council, Houston, Texas. Notes supplied.

November 30, 2007: Speaker, Ethical and Legal Issues for School Counselors, Border Counseling Association, Laredo, Texas. Notes supplied.

August 8, 2006: Speaker, School Counselors and the Law, Border Counseling Association, Laredo, Texas. Notes supplied.

June 26, 2004: Speaker, Judge George P. Kazen 25th Anniversary Celebration, Laredo, Texas. 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.

Ashley Soriano and Yocelin Gallardo, *Courtrooms to Resume In-Person Jury Trials*, NBC-KGNS TV (May 12, 2021). Copy supplied.

Mindy Casso, *Remembering Judge George P. Kazen*, NBC-KGNS TV (May 3, 2021). Copy supplied and video available at: https://www.kgns.tv/2021/05/03/remembering-judge-george-p-kazen.

Julia Wallace, *Family, Colleagues and Friends Reflect on Kazen's Life On and Off the Bench*, LAREDO MORNING TIMES (May 2, 2021). Copy supplied.

Mindy Casso, *Skipping jury duty may be punishable by imprisonment*, NBC-KGNS TV (Oct. 17, 2019). Copy supplied.

Mindy Casso, *Federal courthouse officially named after Judge Kazen*, NBC-KGNS-TV (Nov. 19, 2018). Copy supplied and video available at https://www.kgns.tv/content/news/Federal-courthouse-to-be-officially-renamed-after-Judge-Kazen-500814651.html.

September 6, 2018, Cream City Magazine, Issue No. 50. The magazine published an interview conducted by written submission. The focus of the article was my status as an alumnus from St. Augustine High School and how my high school education affected my career. I do not have a copy of the published article, and it is not available online. However, I did retain a copy of my written responses to the interview questions, which is supplied.

KGNS Staff, *New Kazen set to carry on the legacy of federal judge,* NBC-KGNS TV (Aug. 10, 2018). Copy supplied and video available at https://www.kgns.tv/content/news/John-Kazen-gets-sworn-in-490576111.html.

Joana Santillan, *Judge J. Kazen Sworn In*, THE ZAPATA TIMES (June 20, 2018). Copy supplied.

Joana Santillan, *Nombran a John Kazen Nuevo Juez Federal*, LAREDO MORNING TIMES (June 9, 2018). Copy supplied.

Judge John A. Kazen is Sworn-in as a United States Magistrate, KGNS TV (June 18, 2018). Video available at https://www.kgns.tv/content/news/Judge-Kazens-son-to-be-sworn-in-485846821.html.

Joana Santillan, *Sigue Serie de Juicios en Webb*, LAREDO MORNING TIMES (Feb. 16, 2018). Copy supplied.

Kendra Ablaza, *Alcohol Vendor Files Lawsuit*, LAREDO MORNING TIMES (Sept. 20, 2015). Copy supplied.

Cody Permenter, *Claim States Employees Too Rough*, LAREDO MORNING TIMES (Nov. 5, 2013). Copy supplied (reprinted in multiple outlets).

Special to the Times, *Red Mass Speaker Set for Wednesday*, LAREDO MORNING TIMES (Oct. 5, 2013). Copy supplied.

JJ Velasquez, *Board Acts on Budget Issues*, LAREDO MORNING TIMES (July 1, 2013). Copy supplied (reprinted in multiple outlets).

JJ Velasquez, *LISD Offers $16M for Civic Center*, LAREDO MORNING TIMES (Sept. 14, 2012). Copy supplied.

JJ Velasquez, *Demandan a LISD*, LAREDO MORNING TIMES (Aug. 6. 2012). Copy supplied.

Nick Georgiou, *LISD Will Try to Buy City Civic Center*, LAREDO MORNING TIMES (Mar. 24, 2012). Copy supplied.

Dennis Silva II, *Zachry Complex Looms*, LAREDO MORNING TIMES (Sept. 4,

2011). Copy supplied.

Nick Georgiou, *Zachry Complex Should be Done by End of Year*, LAREDO MORNING TIMES (July 20, 2011). Copy supplied.

Nick Georgiou, *LISD Staff is "Afraid," Trustee Says*, LAREDO MORNING TIMES (Dec. 3, 2010). Copy supplied.

Nick Georgiou, *LISD in Arbitration in Program Audit*, LAREDO MORNING TIMES (June 20, 2009). Copy supplied.

Taryn White, *Nepotism a Real Worry*, LAREDO MORNING TIMES (Nov. 27, 2008). Copy supplied.

Taryn White, *Outside Counsel Hired On*, LAREDO MORNING TIMES (Oct. 18, 2008). Copy supplied.

Jason Buch, *Judge Nixes Montalvo Challenge*, LAREDO MORNING TIMES (Sept. 30, 2008). Copy supplied.

Paul Martinez, *Cargo Eventual Por Seis Semanas,* LAREDO MORNING TIMES (Sept. 23, 2008). Copy supplied.

Tricia Cortez, *Cigarroa High Employee Sues*, LAREDO MORNING TIMES (Feb. 28, 2008). Copy supplied.

Tricia Cortez, *It's Getting Hot – LISD Chief Files Own Report*, LAREDO MORNING TIMES (Jan. 11, 2008). Copy supplied (reprinted in multiple outlets).

Tricia Cortez, *Cartas Decision Delayed Despite Lengthy Meeting*, LAREDO MORNING TIMES (Dec. 20, 2007). Copy supplied.

Tricia Cortez, *Cartas Topic of Tuesday Meeting*, LAREDO MORNING TIMES (Dec. 18, 2007). Copy supplied (reprinted in multiple outlets).

Tricia Cortez, *Probes Begin - LISD Launches Investigations of*, LAREDO MORNING TIMES (Dec. 10, 2007). Copy supplied.

Christina Rosales, *Law Change Means No School Trustee Elections This*, LAREDO MORNING TIMES (Aug. 31, 2007). Copy supplied (reprinted in multiple outlets).

Tricia Cortez, *LISD Sets Vote on KIVA Deal*, LAREDO MORNING TIMES (May 16, 2007). Copy supplied.

Tricia Cortez, *LISD Audits Fall Into Limbo: Superintendent*, LAREDO MORNING TIMES (Apr. 26, 2007). Copy supplied.

Tricia Cortez, *Trustee Considers Giving Up Seat*, LAREDO MORNING TIMES (Mar. 17, 2006). Copy supplied.

Tricia Cortez, *Gyms, Field House Wait for Electricity*, LAREDO MORNING TIMES (Sept. 27, 2004). Copy supplied.

Tricia Cortez, *LISD Gets Clear Title to Paper Streets*, LAREDO MORNING TIMES (Sept. 21, 2004). Copy supplied.

Laurel Almada, *LISD Sues City Over Paper Streets*, LAREDO MORNING TIMES (May 26, 2004). Copy supplied.

Robert Garcia, *Court Rules on Former LISD Official's Lawsuit*, LAREDO MORNING TIMES (Mar. 28, 2003). Copy supplied.

Odie Arambula, *LISD Reorganization Raises Concern*, LAREDO MORNING TIMES (Mar. 16, 2003). Copy supplied.

Odie Arambula, *Monday Wash: Running Out of Fingers*, LAREDO MORNING TIMES (July 15, 2002). Copy supplied.

Diana De La Garza, *Diocese Resolves Sports Complex Complaints With*, LAREDO MORNING TIMES (July 12, 2002). Copy supplied.

Tricia Cortez, *Laredo Diocese Planning Traditional Red Mass*, LAREDO MORNING TIMES (Aug. 29, 2001). Copy supplied.

Diana De La Garza, *LISD Plans No Appeal of Decision for Trevino*, LAREDO MORNING TIMES (Apr. 25, 2001). Copy supplied.

Diana De La Garza, *Sources Say LISD OK in Bus Advertising*, LAREDO MORNING TIMES (Feb. 21, 2001). Copy supplied.

Kelly Hildebrandt, *Teachers in Lawsuit Against Company, School*, LAREDO MORNING TIMES (June 25, 2000). Copy supplied.

Robert Garcia, *LISD, Lamar Teacher in Lawsuit*, LAREDO MORNING TIMES (Oct. 21, 1999). Copy supplied.

Rick Pauza, *LISD Attorney Explains Interviews*, LAREDO MORNING TIMES (June 27, 1998). Copy supplied.

John Sevigny, *LISD Trustees Deny Finalist List*, LAREDO MORNING TIMES (June 25, 1998). Copy supplied.

L.B. Eisen, *LISD Search Considers Family-Oriented Approach*, LAREDO MORNING TIMES (June 24, 1998). Copy supplied.

Mark Peterson, *LISD Letters Clear Misunderstanding*, LAREDO MORNING TIMES (May 12, 1998). Copy supplied.

Mark Peterson, *AG Rules for Release of Letter*, LAREDO MORNING TIMES (May 9, 1998). Copy supplied.

Mark Peterson, *Ramirez Says Letter no Factor in Decision*, LAREDO MORNING TIMES (Mar. 7, 1998). Copy supplied.

Mark Peterson, *Tax-collecting Attorney Works for City, Schools*, LAREDO MORNING TIMES (Dec. 21, 1997). Copy supplied.

Staff reporters and Editor Odie Arambula, *Times Obtains Unedited Version of LISD Report*, LAREDO MORNING TIMES (Dec. 2, 1997). Copy supplied.

Staff reporters, *Portions of LISD Report Blacked Out in LMT Copy*, LAREDO MORNING TIMES (Nov. 21, 1997). Copy supplied.

Eddie Zavala, *Troublesome Parents Top Teachers Lists*, LAREDO MORNING TIMES (Mar. 31, 1996). Copy supplied.

L.B. Eisen, *LISD Suit Alleges Cheating*, LAREDO MORNING TIMES (Mar. 13, 1996). Copy supplied.

L.B. Eisen, *LISD Dealing with TV Demotion Protest*, LAREDO MORNING TIMES (Feb. 13, 1996). Copy supplied.

Andrew Blum, *Asbestos Litigation in Disarray*, THE NATIONAL LAW JOURNAL (Sept. 3, 1990). Copy supplied.

Additionally, I recall being interviewed for an article by the San Antonio Express-News about my father, U.S. District Court Judge George Kazen, for his 25th Anniversary on the bench in June 2004, but I was not ultimately quoted in the piece.

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

Since June 2018, I have served as a United States Magistrate Judge on the United States District Court for the Southern District of Texas. I was selected for that position following a two-stage process. In the first stage, members of a merit selection panel comprised of lawyers and non-lawyers recommended three finalists. In the second stage.

the United States District Judges of the Southern District of Texas made the final selection from the three finalists. I am currently serving an eight-year renewable term. The United States District Court for the Southern District of Texas is an Article III court of limited jurisdiction, and the jurisdiction of United States Magistrate Judges is governed by 28 U.S.C. § 636. For civil cases in which the parties have consented to the magistrate judge, I preside over every aspect of the case through final disposition, including trial. I handle civil cases referred by the presiding district judge for full pretrial management, including entry of scheduling orders, the resolution of non-dispositive motions, and issuing reports and recommendations on dispositive motions. I may also be referred individual motions and matters for resolution in cases that have not been fully referred for pretrial management. In criminal cases, my duties involve conducting preliminary proceedings, including initial appearances, probable cause hearings, identity hearings, and detention hearings, as well as the issuance of criminal complaints, material witness complaints, search warrants, seizure warrants, pen registers, and trap and trace orders. I also handle referred motions or matters in criminal cases, and issue reports and recommendations as appropriate, including taking guilty pleas and conducting hearings on motions to suppress and petitions for violations of conditions of supervised release.

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

I have presided over seven civil trials and one misdemeanor criminal trial. I have also presided over jury selection in two felony criminal cases by consent of the parties. Additionally, information from the court's case management/electronic case filing system reflects that I have been assigned as the presiding judge in 85 civil consent cases that have gone to verdict or judgment. I have also presided over 1,814 misdemeanor criminal cases.

i. Of these cases, approximately what percent were:

jury trials:	71%
bench trials:	29%

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.

See attached lists of citations.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of

the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Cantu Silva v. United States*, No. 5:19-CV-151 (S.D. Tex. Oct. 31, 2022), *appeal filed*, No. 22-40835 (5th Cir.). Opinion supplied.

In this Federal Tort Claims Act ("FTCA") case, Plaintiff alleged that a Border Patrol agent negligently shot him in the course of an arrest in the United States. The plaintiff, Cantu Silva, entered the United States near Laredo, Texas without legal documentation with the intent of traveling to Houston. The plaintiff alleged that he was chased by a border patrol agent after fleeing a vehicle and shot by the agent, even though he did not resist the arrest. The border patrol agent claimed he had tripped, causing the firearm to discharge. I presided over a bench trial by consent of the parties. At the conclusion of trial, I *sua sponte* ordered the parties to brief the question of subject matter jurisdiction and potential application of discretionary function exception to the FTCA claim. I subsequently granted Defendant's motion to dismiss, holding that Mr. Cantu Silva's claim of negligence was barred by the discretionary function exception to the FTCA's waiver of sovereign immunity, and dismissed the case for lack of subject matter jurisdiction. Mr. Silva appealed to the Fifth Circuit Court of Appeals, where it is currently pending.

Counsel for Plaintiff:
Felipe De Jesus Vielma, Jr.
Vielma Law Firm, PLLC
1007 San Dario Avenue
Laredo, TX 78040
(956) 725-5500

Roberto F. Ramirez
Law Office of Roberto F. Ramirez, PLLC
5825 Callaghan Road, Suite 201
San Antonio, TX 78228
(210) 239-6757

Norma Nelly Vielma
Attorney at Law
1016 Juarez Avenue
Laredo, TX 78040
(956) 725-5500

Counsel for Defendant:
Lance G. Duke
U.S. Attorney's Office, Southern District of Texas
800 North Shoreline Boulevard, Suite 500

Corpus Christi, TX 78401
(361) 888-3111

2. *Matta v. Kan. City S. Ry. Co.*, No. 5:20-cv-00048, 2022 WL 1467461 (S.D. Tex., Mar. 30, 2022).

Plaintiff sued Defendant for retaliation under the Federal Railroad Safety Act ("FRSA"). The parties consented to trial before me as the magistrate judge. The plaintiff alleged that he was retaliated against for raising a safety concern. I entered an order on Defendant's motion for summary judgment, granting it in part and denying it in part, which involved interpreting the definition of protected activity under the FRSA, an issue that has not been addressed by the Fifth Circuit. The parties subsequently reached a settlement agreement and entered a joint stipulation of dismissal. The case was accordingly dismissed and closed in August 2022.

Counsel for Plaintiff:
Kevin M. Camp
Roven Camp, PLLC
550 Westcott, Suite 305
Houston, TX 77007
(713) 465-8522

Counsel for Defendant:
J. Mitchell Smith
Germer PLLC
America Tower
2929 Allen Parkway, Suite 2900
Houston, TX 77019
(713) 650-1313

3. *Vicente v. United States*, No. 5:20-CV-00081 (S.D. Tex., July 19, 2021), *report and recommendation adopted in part and rejected in part*, 2021 WL 4452786 (S.D. Tex. Sept. 29, 2021). Copy supplied.

This case involved a suit for damages against a Border Patrol agent after a fatal shooting occurred along the United States-Mexico border. The Plaintiffs were the parents and estate administrator of the deceased victim. The Defendants moved to dismiss Plaintiffs' *Bivens* claims. I issued a report and recommendation to the district judge in which I found that Plaintiffs sought to extend *Bivens* into a new context. I also found that two special factors counseled against permitting such an extension: the existence of the Federal Tort Claims Act as an adequate alternative remedial structure, and the national security consequences of extending *Bivens* into the arena of border security. Judge Diana Saldaña adopted my recommendations but rejected my report and recommendation in part. She sustained objections to my findings that (1) the border patrol agent was of a

different rank than the narcotics officer in *Bivens*; (2) that the incident occurred on a public street; and (3) that the conduct at issue only occurred after a proper seizure had already taken place. The district judge also found a third special factor counseling in favor of dismissal, which I did not address: the absence of Congressional action. The parties subsequently reached a settlement agreement and entered a joint stipulation of dismissal. The case was accordingly dismissed and closed in September 2022.

Counsel for Plaintiff:
Edgar Saldivar
American Civil Liberties Union of Texas
5225 Katy Freeway, Suite 350
Houston, TX 77007
(713) 942-8146

Counsel for Defendant United States:
Jimmy Anthony Rodriguez
U.S. Attorney's Office, Southern District of Texas
1000 Louisiana Street, Suite 2300
Houston, TX 77002
(713) 567-9532

Counsel for Defendant Barrera:
Jason Murray Davis
Davis & Santos Attorneys & Counselors, P.C.
719 South Flores Street
San Antonio, TX 78204
(210) 853-5882

Octavio Salinas, II
Attorney at Law
1116 Calle del Norte
Laredo, TX 78041
(956) 727-4942

4. *United States v. 3.572 Acres of Land*, No. 5:20-cv-00039 (S.D. Tex. Jan. 22, 2021). Copy supplied.

This case was one of numerous lawsuits filed by the federal government to acquire land for construction of a border wall through properties abutting the Mexican border. The government sought a right of entry onto the properties to conduct feasibility studies and filed motions for order of immediate possession to obtain those rights of entry. In a case in which the parties consented to me to handle the case through judgment, the property owner opposed the government's right of entry by asserting numerous procedural objections. I issued a preliminary order overruling those objections. The parties resolved the dispute by agreement

and filed a joint stipulation of dismissal, whereby the United States agreed to dismiss the lawsuit without prejudice. The case was accordingly closed in March 2022.

Counsel for Plaintiff:
Chanmealea Thou
11204 McPherson Road, Suite 100A
Laredo, TX 78045
(956) 723-6523

Counsel for Defendant Caldera:
Douglas W. Alexander
Alexander Dubose & Jefferson LLP
515 Congress Avenue, Suite 2350
Austin, TX 78701
(512) 482-9300

Ricardo Efrain de Anda
Attorney at Law
212 Flores Avenue
Laredo, TX 78040
(956) 726-0038

5. *Dixon v. Leopoldo Garza Logistics*; No. 5:17-cv-00127, 2020 WL 4689217 (S.D. Tex. June 26, 2020).

This case involved a single-vehicle rollover of a tractor trailer allegedly caused by the improper loading of its cargo. Plaintiff was the driver who sustained injuries in the accident, and he sued the shipper for negligently loading the contents of the trailer. The case involved the legal issue of the relative legal duties and liability for the unsafe loading of cargo between a shipper, a carrier, and the driver. The parties consented to trial before me as the magistrate judge. I granted summary judgment in favor of the shipper based on a finding that the Plaintiff had an opportunity to inspect the contents of the trailer before commencing the trip. Because the ruling on summary judgment disposed of all Plaintiff's claims, I entered a final judgment in favor of Defendant in June 2020.

Counsel for Plaintiff:
Owen S. Jones
211 East Parkwood Avenue, Suite 110
Friendswood, TX 77546
(281) 992-1541

S. Nasim Ahmad
Ahmad Capodice PLLC
24900 Pitkin Road, Suite 300

The Woodlands, TX 77386
(832) 767-3207

Counsel for Defendant:
Shan Marie Egliskis
Law Office of R.E. (Felix) Cox
1100 Northwest Loop 410, Suite 370
San Antonio, TX 78213
(210) 949-0166

6. *Villarreal v. City of Laredo*, No. 5:19-CV-48, 2020 WL 13517246 (S.D. Tex. May 8, 2020), *aff'd in part, rev'd in part, and remanded*, 17 F.4th 532 (5th Cir. 2021), *withdrawn and superseded by* 44 F.4th 363 (5th Cir. 2022), *reh'g en banc granted, opinion vacated*, 52 F.4th 265 (5th Cir. 2022).

A citizen-journalist brought § 1983 claims against City of Laredo officials after she was arrested pursuant to a statute proscribing the solicitation, with intent to obtain a benefit, of nonpublic information from public servants who possess such information by virtue of their office or employment. While Plaintiff was out on bond, a Texas court declared the statute unconstitutional. Plaintiff then sued to recover damages for violations of her constitutional rights. In this consent case, I granted Defendants' motion to dismiss, finding that the arresting officers had probable cause to believe Plaintiff violated the statute and that they were therefore entitled to qualified immunity. Two judges on a three-judge panel on the Fifth Circuit reversed, finding the arresting officers had no probable cause to believe Plaintiff violated the statute. The Chief Judge dissented. The Fifth Circuit later vacated the panel opinion and agreed to rehear the appeal en banc. The appeal remains pending before the Fifth Circuit Court of Appeals.

Counsel for Plaintiff:
Joshua Tyler Morris
Foundation for Individual Rights and Expression
700 Pennsylvania Avenue, Southeast, Suite 340
Washington, DC 20003
(215) 717-5475

Counsel for Defendants:
William Michael McKamie
Taylor Olson Adkins Sralla & Elam LLC
401 East Sonterra Boulevard, Suite 375
San Antonio, TX 78258
(210) 510-4147

Jason Eric Magee
Allison, Bass & Magee, L.L.P.
402 West 12th Street

Austin, TX 78701
(512) 482-0701

7. *Trevino v. Pompeo*, No. 5:16-CV-00139 (S.D. Tex. Sept. 13, 2019). Decision supplied.

Plaintiff Trevino sued for a judicial declaration that she was a United States citizen by birth. The parties consented to trial with me. The case involved the resolution of legal issues relating to competing birth certificates in Mexico and the United States. I conducted a bench trial, entered findings of fact and conclusions of law, and entered a final judgment in favor of Plaintiff in September 2019.

Counsel for Plaintiff:
Norberto Cardenas, III
The Law Office of Norberto Cardenas III, PLLC
9902 Crystal Court, Suite 101
Laredo, TX 78045
(956) 726-0700

Counsel for Defendants:
Richard A. Kincheloe
Elizabeth Frances Karpati
United States Attorney's Office
1000 Louisiana Street, Suite 2300
Houston, TX 77002
(713) 567-9422

8. *United States v. Martinez-Fernandez*, No. 5:18-CR-789 (S.D. Tex. Apr. 12, 2019), *R. & R. adopted*, No. 5:18-CR-789 (S.D. Tex. May 16, 2019). Copy supplied.

I prepared a report and recommendation on Defendant's motion to suppress evidence in this criminal case in which Defendant was charged with being a felon in possession of a firearm, discovered in the course of an investigation involving the theft of cases of tequila. The motion raised issues about whether Defendant was seized within the meaning of the Fourth Amendment, whether the search of Defendant's home was based on valid consent, and whether any of Defendant's statements were elicited in violation of his Fifth Amendment *Miranda* rights. I recommended that the majority of the motion be denied except as to the discovery of a firearm in Defendant's home. The district judge adopted my report and recommendation, and the Defendant pled guilty to alien in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(5)(A) and 924(a)(2), and was sentenced by the district judge to time served followed by one year of supervised release.

Counsel for Plaintiff:

April Holly Ayers-Perez
Department of Justice, Antitrust Division
450 5th Street, Northwest, Room 11412
Washington, DC 22035
(202) 598-2576

Counsel for Defendant:
Arturo Vasquez
Federal Public Defender's Office
600 East Harrison, Room 102
Brownsville, TX 78520
(956) 548-2573

9. *United States v. Reynero-Serna*, No. 5:18-CR-00335 (S.D. Tex. Aug. 21, 2018), *aff'd*, 786 F. App'x 28 (5th Cir. 2019). Report and recommendation supplied.

I prepared a report and recommendation on Defendant's motion to suppress evidence. Defendant was charged with transporting undocumented aliens in this criminal case. Defendant asserted that the arresting officers committed an unreasonable search and seizure in violation of the Fourth Amendment because they lacked reasonable suspicion to stop his vehicle. The district court adopted my recommendation that the motion to suppress be denied. The Defendant pled guilty to conspiracy to transport an undocumented alien within the United States, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii), (v)(I), and (B)(i), and was sentenced to a term of imprisonment of 15 months followed by three years of supervised release. Defendant appealed the ruling on the motion to suppress. The Fifth Circuit affirmed.

Counsel for Plaintiff:
Matthew Isaac
Gordon Rees Scully Mansukhani, LLP
275 Battery Street Suite 2000
San Francisco, CA 94111
(415) 986-5900

Counsel for Defendant:
David Castillo
Federal Public Defender's Office
1202 Houston Street
Laredo, TX 78040
(956) 753-5313

10. *Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc.*, No. 5:10-CV-00131 (S.D. Tex.).

This case involved the shifting burdens of proof and establishing a prima facie case under the Carmack Amendment for a loss of cargo during shipment from China to the United States. This was the first jury trial I presided over as a judge. Prior to my assignment to the case as magistrate judge, the Fifth Circuit issued an opinion reversing the district court's grant of summary judgment, but the opinion left open some legal issues related to the language of a jury question. The jury returned a verdict for Defendant, and I entered a final judgment in November 2018.

Counsel for Plaintiff:
Guillermo Gerardo Alarcon
J. Alberto Alarcon
Hall Quintanilla & Alarcon
1302 Washington Street
Laredo, TX 78040
(956) 723-5527

Counsel for Defendants:
Craig A. Lawrence
Attorney at Law, P.C.
6999 McPherson Road, Suite 325
Laredo, TX 78041
(956) 717-1961

Marcel C Notzon, III
The Notzon Law Firm
6999 McPherson Road, Suite 325
Laredo, TX 78041
(956) 717-1961

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. *Canlu Silva v. United States*, No. 5:19-CV-151 (S.D. Tex. Oct. 31, 2022), *appeal filed*, No. 22-40835 (5th Cir.). Opinion previously supplied in response to Question 13(c).

Counsel for Plaintiff:
Felipe De Jesus Vielma, Jr.
Vielma Law Firm, PLLC
1007 San Dario Avenue
Laredo, TX 78040
(956) 725-5500

Roberto F. Ramirez
Law Office of Roberto F. Ramirez, PLLC
5825 Callaghan Road, Suite 201
San Antonio, TX 78228
(210) 239-6757

Norma Nelly Vielma
Attorney at Law
1016 Juarez Avenue
Laredo, TX 78040
(956) 725-5500

Counsel for Defendant:
Lance G. Duke
U.S. Attorney's Office, Southern District of Texas
800 North Shoreline Boulevard, Suite 500
Corpus Christi, TX 78401
(361) 888-3111

2. *Martinez v. Hinojosa*, No. 5:20-CV-75 (S.D. Tex. Mar. 31, 2022). Copy supplied.

Lead Counsel for Plaintiff:
David L. Flores
Griffith Law Group
4228 North McColl
McAllen, TX 78504
(956) 971-9446

Lead Counsel for Defendants:
William Michael McKamie
Taylor Olson Adkins Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, TX 76107
(817) 332-2580

3. *Matta v. Kan. City S. Ry. Co.*, No. 5:20-CV-48, 2022 WL 1467461 (S.D. Tex. Mar. 30, 2022).

Counsel for Plaintiff:
Kevin M. Camp
Roven Camp, PLLC
550 Westcott, Suite 305
Houston, TX 77007
(713) 465-8522

Counsel for Defendant:
J. Mitchell Smith
Germer PLLC
P.O. Box 4915
Beaumont, TX 77704
(409) 654-6700

4. *Ragar Transp., Ltd. v. Lear Corp.*, No. 5:17-CV-52, 2021 WL 4502316 (S.D. Tex. Sept. 30, 2021).

Lead Counsel for Plaintiff:
Mark Anthony Fassold
Watts Guerra LLP
875 East Ashby Place, Suite 1200
San Antonio, TX 78212
(210) 447-0500

Lead Counsel for Defendant Lear Corporation:
Burgain Garfield Hayes
Attorney at Law
P.O. Box 10447
Austin, TX 78766
(512) 472-2193

Lead Counsel for Ryder Integrated Logistics Inc.:
Jason Murray Davis
Davis & Santos Attorneys & Counselors, P.C.
719 South Flores Street
San Antonio, TX 78204
(210) 853-5882

5. *Vicente v. United States*, No. 5:20-CV-81, 2021 WL 5242955 (S.D. Tex. July 19, 2021), *R. & R. adopted in part, rejected in part*, No. 5:20-CV-81, 2021 WL 4452786 (S.D. Tex. Sept. 29, 2021). Opinion previously supplied in response to Question 13(c).

Counsel for Plaintiff:
Edgar Saldivar
American Civil Liberties Union of Texas
5225 Katy Freeway, Suite 350
Houston, TX 77007
(713) 942-8146

Counsel for Defendant United States:
Jimmy Anthony Rodriguez
U.S. Attorney's Office, Southern District of Texas

1000 Louisiana Street, Suite 2300
Houston, TX 77002
(713) 567-9532

Counsel for Defendant Barrera:
Jason Murray Davis
Davis & Santos Attorneys & Counselors, P.C.
719 South Flores Street
San Antonio, TX 78204
(210) 853-5882

Octavio Salinas, II
Attorney at Law
1116 Calle del Norte
Laredo, TX 78041
(956) 727-4942

6. *Dixon v. Leopoldo Garza Logistics*; No. 5:17-CV-127, 2020 WL 4689217 (S.D. Tex. June 26, 2020).

Counsel for Plaintiff:
Owen S. Jones
16214 Blue Mesa Ridge Drive
Friendswood, TX 77546
(281) 992-1541

S. Nasim Ahmad
Ahmad Capodice PLLC
24900 Pitkin Road, Suite 300
The Woodlands, TX 77386
(832) 767-3207

Counsel for Defendant:
Shan Marie Egliskis
20726 Stone Oak Parkway, Suite 116
San Antonio, TX 78258
(210) 446-2828

7. *Villarreal v. City of Laredo*, No. 5:19-CV-48, 2020 WL 13517246 (S.D. Tex. May 8, 2020), *aff'd in part, rev'd in part, and remanded*, 17 F.4th 532 (5th Cir. 2021), *withdrawn and superseded by* 44 F.4th 363 (5th Cir. 2022), *reh'g en banc granted, opinion vacated*, 52 F.4th 265 (5th Cir. 2022).

Counsel for Plaintiff:
Joshua Tyler Morris
Foundation for Individual Rights and Expression

700 Pennsylvania Avenue, Southeast, Suite 340
Washington, DC 20003
(215) 717-5475

Counsel for Defendants City of Laredo, *et al.*:
William Michael McKamie
Taylor Olson Adkins Sralla & Elam LLC
401 East Sonterra Boulevard, Suite 375
San Antonio, TX 78258
(210) 510-4147

Counsel for Defendants Webb County, Texas, *et al.*:
Jason Eric Magee
Allison, Bass & Magee, L.L.P.
1301 Nueces Street, Suite 201
Austin, TX 78701
(512) 482-0701

8. *United States v. Martinez-Fernandez*, No. 5:18-CR-789 (S.D. Tex. Apr. 12, 2019), *R. & R. adopted*, No. 5:18-CR-789 (S.D. Tex. May 11, 2019). Opinion previously supplied in response to Question 13(c).

Counsel for Plaintiff:
April Holly Ayers-Perez
Department of Justice, Antitrust Division
450 5th Street, Northwest, Room 11412
Washington, DC 22035
(202) 598-2576

Counsel for Defendant:
Arturo Vasquez
Federal Public Defender's Office
600 East Harrison, Room 102
Brownsville, TX 78520
(956) 548-2573

9. *United States v. Reynero-Serna*, No. 5:18-CR-00335 (S.D. Tex. Aug. 21, 2018), *aff'd*, 786 F. App'x 28 (5th Cir. 2019). Report and recommendation previously supplied in response to Question 13(c).

Counsel for Plaintiff:
Matthew Isaac
Gordon Rees Scully Mansukhani, LLP
275 Battery Street Suite 2000
San Francisco, CA 94111
(415) 986-5900

Counsel for Defendant:
David Castillo
Federal Public Defender's Office
1202 Houston Street
Laredo, TX 78040
(956) 753-5313

10. *Garza v. Briones*, No. 16-CV-251, 2018 WL 8874191 (S.D. Tex. Aug. 16, 2018), *R. & R. adopted*, No. 5:16-CV-00251, 2018 WL 8868510 (S.D. Tex. Sept. 13, 2018), *aff'd*, 943 F.3d 740 (5th Cir. 2019).

Counsel for Plaintiffs:
Jose Eduardo Pena
Attorney at Law
P.O. Box 102
1219 Victoria Street, Suite 2
Laredo, TX 78042
(956) 722-9854

Counsel for Defendants:
Albert Lopez
Law Offices of Albert Lopez
2222 Estate Gate Drive
San Antonio, TX 78260
(210) 404-1983

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

To the best of my knowledge and based upon a review of publicly available legal databases, certiorari has not been requested or granted in any of my cases.

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

La Union del Pueblo Entero v. Fed. Emergency Mgmt. Agency et al., No. 5:21-CV-71, (S.D. Tex. June 12, 2023), *R. & R. adopted in part, rejected in part*, No. 5:21-CV-71 (S.D. Tex. Aug. 1, 2023). Copies supplied. Plaintiff sued the Federal Emergency Management Agency (FEMA) and the Department of Homeland Security (DHS) under the Freedom of Information Act (FOIA). After conducting a records search and producing records, Defendants moved to dismiss, or in the alternative, for summary judgment, and Plaintiff filed a motion for discovery. In a report and recommendation, I recommended that Defendants' motions be granted

in part and denied in part and that Plaintiff's motion for discovery be denied. The district judge adopted the majority of my recommendations, but she postponed deciding my recommendation that 5 U.S.C. § 552(a)(4)(B) authorizes courts to order agencies to post documents online. Instead, the district judge deferred deciding that issue because it may be mooted as the case proceeds, therefore denying Defendants' motion for summary judgment on that issue without prejudice. The district judge also deferred deciding my recommendation on whether a district court has authority to issue a prospective injunction to enforce the electronic reading room requirement of 5 U.S.C. § 552(a)(4)(B). The case remains pending.

United States v. Saldana-Alaniz, No. 5:22-CR-822 (S.D. Tex. Mar. 16, 2023), *R. & R. adopted in part, rejected in part*, No. 5:22-CR-822 (S.D. Tex. June 30, 2023). Copies supplied. Defendant was charged with illegal possession of ammunition by an alien unlawfully in the United States. He filed a motion to suppress evidence of the ammunition on the grounds that the warrantless search of the premises was unlawful because the officers lacked probable cause and Defendant did not consent to the search. I issued a report and recommendation recommending that the motion to suppress be denied because exigent circumstances supported the warrantless entry of the premises and because Defendant consented. The district court adopted the majority of the report and recommendation and denied the motion to suppress. But in so doing, the district judge granted some objections to factual findings and legal conclusions. The district judge also modified the recommendations to find that the evidence supported that the officers' search was justified as a protective sweep. Defendant pled guilty to being an alien in possession of ammunition, in violation of 18 U.S.C. §§ 925(g)(5)(A) and 924(a)(2). Defendant is scheduled to be sentenced by the district judge later this year.

Vicente v. United States, No. 5:20-CV-81, 2021 WL 5242955 (S.D. Tex. July 19, 2021), *R. & R. adopted in part, rejected in part*, No. 5:20-CV-81, 2021 WL 4452786 (S.D. Tex. Sept. 29, 2021). This case involved a suit for damages against a Border Patrol agent after a fatal shooting occurred along the United States-Mexico border. The Defendants moved to dismiss Plaintiffs' *Bivens* claims. I issued a report and recommendation in which I found that Plaintiffs sought to extend *Bivens* into a new context. I also found that two special factors counseled against permitting such an extension: the existence of the Federal Tort Claims Act as an adequate alternative remedial structure, and the national security consequences of extending *Bivens* into the arena of border security. The district judge adopted my recommendations but rejected my report and recommendation in part. The district judge rejected in part because she sustained objections to my findings that (1) the border patrol agent was of a different rank than the narcotics officer in *Bivens*; (2) that the incident occurred on a public street; and (3) that the conduct at issue only occurred after a proper seizure had already taken place. The district judge also found a third special factor counseling in favor of dismissal, which I did not address: the absence of Congressional action.

Boone v. Davis et al., No. 5:20-CV-113 (S.D. Tex. Apr. 12, 2021), *R. & R. adopted in part, rejected in part*, No. 5:20-CV-113 (S.D. Tex. Sept. 1, 2021). Copies supplied. In this case, Petitioner filed a petition for writ of habeas corpus and Respondents moved for summary judgment. In a report and recommendation, I recommended that the petition be denied as time-barred and that Respondents' motion for summary judgment be granted. The district judge agreed. However, the district judge rejected the report and recommendation in part because I had concluded that the petition was filed five days after she concluded it had actually been filed. The date I had used reflected the date stamped on the petition by the state court clerk. Other records suggested it was filed five days sooner, and thus the court sustained Respondents' objection in that respect.

Osorio v. United States, No. 5:16-CR-946-3, 2020 WL 12788169 (S.D. Tex. Nov. 12, 2020), *R. & R. adopted as modified*, No. 5:16-CR-946-3, 2021 WL 5279490 (S.D. Tex. Nov. 12, 2021). This case involved a motion to vacate a sentence following a guilty plea. The petitioner, who was partially blind, asserted that his guilty plea was not knowing and voluntary because his attorney failed to read aloud for him two paragraphs from the plea agreement. In a report and recommendation to the district judge, I recommended that the motion be denied. The district judge agreed and adopted my recommendation. However, the district judge also sustained an objection that I misattributed to the Fifth Circuit a conclusion that was actually made by appellate counsel in an *Anders* brief.

Villarreal v. City of Laredo, No. 5:19-CV-48, 2020 WL 13517246 (S.D. Tex. May 8, 2020), *aff'd in part, rev'd in part, and remanded*, 17 F.4th 532 (5th Cir. 2021), *withdrawn and superseded by* 44 F.4th 363 (5th Cir. 2022), *reh'g en banc granted, opinion vacated*, 52 F.4th 265 (5th Cir. 2022). A citizen-journalist brought § 1983 claims against officials after she was arrested pursuant to a statute proscribing the solicitation, with intent to obtain a benefit, of nonpublic information from public servants who possess such information by virtue of their office or employment. While Plaintiff was out on bond, a Texas court declared the statute unconstitutional. Plaintiff then sued to recover damages for violations of her constitutional rights. I granted Defendants' motion to dismiss, finding that the arresting officers had probable cause to believe Plaintiff violated the statute and that they were therefore entitled to qualified immunity. Two judges on a three-judge panel on the Fifth Circuit reversed, finding the arresting officers had no probable cause to believe Plaintiff violated the statute. The Chief Judge dissented. The Fifth Circuit later vacated the panel opinion and agreed to rehear the appeal en banc.

Gonzalez v. Degollado, No. 5:20-CV-30, 2020 U.S. Dist. LEXIS 88483 (S.D. Tex. Mar. 23, 2020). *R. & R. rejected by* No. 5:20-CV-30, 2020 U.S. Dist. LEXIS 71315 (S.D. Tex. Apr. 22, 2020). In this case I issued an order denying a pro se Plaintiff's motion to proceed *in forma pauperis* ("IFP"). I denied the motion because I believed the Prison Litigation Reform Act's three-strikes rule barred

him from bringing any more civil actions IFP. The district judge construed my order as a report and recommendation, rejected it, and granted Plaintiff's motion. The district judge reasoned that one of the cases I counted as a strike against Plaintiff was created by another district court as a purely discretionary decision to sever claims for the sake of convenience. The district judge concluded that counting this as a separate strike would unfairly allow a discretionary and independent event to control Plaintiff's future eligibility for IFP status.

Cuellar v. Hernandez, No. 5:17-CV-76, 2019 WL 13114338 (S.D. Tex. June 28, 2019), *R. & R. adopted in part, rejected in part*, No. 5:17-CV-76, 2019 WL 13114311 (S.D. Tex. Sept. 16, 2019). Parents sued under § 1983 after Laredo police officers shot their son, a Webb County Sherriff's Deputy, in his home during a welfare check. Defendants, two Laredo police officers and the City of Laredo, all moved for summary judgment, asserting qualified immunity. There was a factual dispute as to whether decedent raised his gun after he was instructed to drop it. I recommended that summary judgment be granted for the City of Laredo under qualified immunity. However, as a result of the factual dispute, I recommended that the district judge deny summary judgment as to the excessive force claim against one officer and the invasion-of-privacy claims against both officers. I found that the plaintiffs had established an alleged violation of a clearly established constitutional right. The district judge rejected my recommendation in part, granting the dismissal of the excessive force claim against the officer, on the grounds that the alleged constitutional violation was not clearly established under Supreme Court or Fifth Circuit precedent. Both invasion-of-privacy claims were permitted to proceed, but the parties reached a settlement agreement and filed a joint stipulation of dismissal.

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.

In my five years as a magistrate judge, I have issued more than 7,500 orders, reports and recommendations, opinions, and orders on motions. Most of these are routine, but approximately 200 rulings involved substantive factual or legal analysis. Of these rulings, approximately 129 are available on Lexis and/or Westlaw, and the remaining orders are stored in the electronic case management system maintained by the United States District Court for the Southern District of Texas.

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.

Martinez v. Hinojosa, No. 5:20-CV-75 (S.D. Tex. Mar. 31, 2022). Copy previously supplied in response to Question 13d.

Vicente v. United States, No. 5:20-cv-00081, 2021 WL 4452768 (S.D. Tex. Sept. 9, 2021).

Villarreal v. City of Laredo, No. 5:19-CV-48, 2020 WL 13517246 (S.D. Tex. May 8, 2020), *aff'd in part, rev'd in part and remanded*, 17 F.4th 532 (5th Cir. 2021), *withdrawn and superseded by* 44 F.4th 363 (5th Cir. 2022), *reh'g en banc granted, opinion vacated*, 52 F.4th 265 (5th Cir. 2022).

United States v. Martinez-Fernandez, No. 5:18-CR-789 (S.D. Tex. Apr. 12, 2019), *R. & R. adopted*, No. 5:18-CR-789 (S.D. Tex. May 11, 2019). Copy previously supplied in response to Question 13c.

Garza v. Briones, No. 5:16-CV-251, 2018 WL 8874191 (S.D. Tex. Aug. 16, 2018), *R. & R. adopted*, No. 5:16-CV-00251, 2018 WL 8868510 (S.D. Tex. Sept. 13, 2018), aff'd, 943 F.3d 740 (5th Cir. 2019).

United States v. Reynero-Serna, No. 5:18-CR-00335 (S.D. Tex. Aug. 21, 2018), *aff'd*, 786 F. App'x 28 (5th Cir. 2019). Copy previously supplied in response to Question 13c.

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.

I make recusal decisions in accordance with the Code of Conduct for United States Judges and 28 U.S.C. § 455, and I comply with the conflicts screening procedures of the United States District Court for the Southern District of Texas. I recused myself in the following cases:

Mares v. Webb County, Texas, No. 5:18-cv-00121 (S.D. Tex.). I recused sua sponte because Plaintiff was formerly a board member of one of my former clients.

Alvarado v. Ross Dress for Less, Inc., No. 5:19-cv-00103 (S.D. Tex.). I recused sua sponte myself because a party was represented by my former law firm.

Santos v. Transportes Logisticos de Carga, S.A. de C.V., et al., No. 5:20-cv-00009 (S.D. Tex.). I recused sua sponte because a party was represented by my former law firm.

Bricker Transport, LLC v. Great Southern Technologies, LLC. et.al., No. 5:20-cv-00020 (S.D. Tex.). I recused sua sponte because I had previously represented one of the parties as an attorney.

Bruni et al. v. Hughes, in her official capacity as the Texas Secretary of State, et al., No. 5:20-cv-00035 (S.D. Tex.). I recused sua sponte because I had previously been adverse to one of the parties in a legal matter.

The United States of America v. 202.893 Acres of Land, more or less, et al., No. 5:20-cv-00067 (S.D. Tex.). I recused sua sponte because a former law firm partner of mine was serving as counsel for a Defendant.

Gonzalez v. Texas Webb County, et al., No. 5:20-cv-00052 (S.D. Tex.). I recused sua sponte because a family member was involved in the judicial procedural history of this prisoner habeas corpus case.

Gonzalez v. Degollado et al., No. 5:20-cv-00030 (S.D. Tex.). I recused sua sponte because a family member was involved in the judicial procedural history of this prisoner habeas corpus case.

Texas Alliance of Retired Americans, et al. v. Scott, in his official capacity as the Texas Secretary of State, No. 5:20-cv-00128 (S.D. Tex.). I recused sua sponte because I had previously been adverse in a legal matter involving one of the parties.

U.S. v. 13,887 Covid Test Kits, No. 5:20-cv-00153 (S.D. Tex.). I recused sua sponte because a member of my chambers staff had a financial interest in the real party in interest.

The United Independent School District v. Palacios et al., No. 5:20-cv-00179 (S.D. Tex.). I recused sua sponte because one of the parties was a former client.

Osinski v. Laredo College; No. 5:20-cv-00189 (S.D. Tex.). I recused sua sponte because

one of the parties was a former client.

Limas v. Leyendecker Oil, Inc.; No. 5:20-cv-00200 (S.D. Tex.). I recused sua sponte because one of the parties was a former client.

Limas v. Oscar & Betty Moreno Properties, Ltd., No. 5:20-cv-00174 (S.D. Tex.). I recused sua sponte because my personal relationship with one of the parties.

Dunkle v. Armstrong et al., No. 5:21-cv-00140; (S.D. Tex.). I recused sua sponte because my former law firm was representing one of the parties.

Samtani et al. v. City of Laredo et al., No. 5:22-cv-00076 (S.D. Tex.). Pro se Plaintiffs' original complaint included a motion to recuse all federal judges of the Laredo Division of the Southern District of Texas and me in particular. The otherwise inflammatory allegations did include a correct assertion that I had previously been adverse to the named Plaintiff in litigation I previously handled as an attorney. I therefore entered an order of recusal on that basis.

Samtani v. State Farm Lloyds, No. 5:22-cv-00082 (S.D. Tex.). I recused sua sponte because I had been adverse to one of the parties in litigation I previously handled as an attorney.

Sealed Case No. 5:19-MC-894; (S.D. Tex.). I recused sua sponte because I had been adverse to one of the parties in litigation I previously handled as an attorney.

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

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

From 2011 to 2014 I served as the Director for District 12 on the State Bar of Texas Board of Directors. I was elected by the attorneys of District 12, which is comprised of 17 counties in south Texas. The term of office is for three years, and I served the full term.

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 1990 to 1991 I served as a law clerk to the Honorable Robert M. Parker of the United States District Court for the Eastern District of Texas.

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

I have not practiced law alone.

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

1991 – 1997
Kemp, Smith, Duncan & Hammond, P.C.
221 North Kansas, Suite 1700
El Paso, Texas 79901
Partner (1996 – 1997)
Associate (1991 – 1996)

1997 – 2018
Kazen, Meurer & Pérez, L.L.P.
211 Calle del Norte
Laredo, Texas 78041
Partner

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

In 1999 I completed a 40-hour basic mediation training course in dispute resolution techniques. From 2004 to 2018, I served as a mediator in approximately 25 cases. As a mediator, it was my practice to not keep any notes after the conclusion of the mediation, and so I do not have any notes or records of those mediations, and I have no recollection of the specifics of any particular case I mediated. I recall that the majority of the cases I mediated involved personal injury negligence claims arising from motor vehicle accidents.

b. Describe:

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

When I began practicing law in 1991 as an attorney with the Kemp Smith law firm in El Paso, Texas, my practice was primarily in personal injury defense litigation. After I started my own law firm in Laredo, Texas in 1997, I continued to handle personal injury defense litigation, but my practice also expanded to include the general representation of businesses and organizations. This representation included advising clients on matters such as personnel matters and business transactions. I also handled civil litigation matters for my business and organizational clients. For example, I was outside general counsel to the Laredo Independent School District ("LISD") from 1997 to 2018. I provided legal advice and counseling to LISD's board of trustees and administration on issues such as board governance, public information requests, student issues, employee issues and grievances, business transactions, and litigation matters.

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

From 1991 to 1997, my practice was primarily in personal injury defense litigation, and I represented businesses, insurance companies, and insureds. From 1997 to 2018, I continued to handle personal injury defense litigation, but my practice also expanded to include the general representation of businesses and organizations. My two largest clients were the Laredo Independent School District and the Catholic Diocese of Laredo. I also represented a variety of other businesses, including a residential construction company and a few warehousing and logistics companies. For those business and organizational clients, I generally handled their civil litigation matters and also advised them about personnel matters and business transactions.

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

The majority of my practice was in litigation, and I appeared in court frequently. I estimate that approximately 65 percent of my practice was in litigation. My trial practice was exclusively in civil litigation, and I appeared primarily in state court.

i. Indicate the percentage of your practice in:

1. federal courts: 10%
2. state courts of record: 90%
3. other courts: 0%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 100%
2. criminal proceedings: 0%

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

I tried 18 jury trials to verdict. In those jury trials, I was sole counsel in approximately six cases, chief counsel in approximately six cases, and co-counsel with another law firm in approximately six cases. I also tried approximately 5 bench trials as lead counsel in ad valorem tax cases. From 1997 to 2018, my law firm handled ad valorem tax collection litigation for two local governmental entities. The vast majority of those cases were resolved by default judgment, but a few of those cases went to a bench trial. After a search of the available public records, I have not been able to determine the precise number of those cases that proceeded to a bench trial.

i. What percentage of these trials were:
1. jury: 78%
2. non-jury: 22%

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 did not practice 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. *Moreno vs. Mary Help of Christians Sch.*, Cause No. 2012CVT000773-D3 (341st. Dist. Ct., Webb County, Tex. 2012), *In re Vida*, No. 04-14-00636-CV, 2015 WL 82717 (Tex. App. Jan. 7, 2015).

I was attorney-in-charge for Defendant Dr. Vida, superintendent of schools for the Catholic Diocese of Laredo, who was sued for negligence, tortious interference, and other causes of action. The allegations concerned her participation in a decision by the school defendant not to promote a student from kindergarten to first grade. I conducted discovery and co-drafted pleadings and dispositive motions with an associate attorney. We prepared a plea asserting that the claims against Dr. Vida should be dismissed for lack of jurisdiction pursuant to the ecclesiastical abstention doctrine under the First Amendment to the U.S. Constitution. The trial court denied the motion. We then filed a writ of mandamus—similar to an interlocutory appeal—to the Texas Fourth Court of Appeals asserting that the trial court abused its discretion in denying the motion. During the appellate proceedings, we retained appellate counsel, and I assisted with editing and reviewing the briefing. There was no oral argument. The Fourth Court of Appeals ruled in our client's favor and granted the writ of mandamus, conditionally ordering the trial court to dismiss the case. The plaintiffs filed in the Court of Appeals a motion for reconsideration and a motion for *en banc* reconsideration, both of which were denied. Plaintiffs then filed a Petition for Writ of Mandamus with the Texas Supreme Court, *In Re Moreno and Moreno, Individually and on Behalf of Their Daughter GM*, Case No. 15-0167. Plaintiffs also filed an emergency motion to stay the Court of Appeals' order granting the writ. Both motions were denied by the Texas Supreme Court. The trial court entered an order granting our plea and motion for severance in accordance with the Court of Appeals' conditional writ of mandamus. Plaintiffs filed a motion to modify the judgment and motion for new trial. They then filed a motion for rehearing on the plea to the jurisdiction. Those motions were denied and the dismissal of claims against Vida became final.

Date of representation: 2012 – 2016

Judge: Honorable Beckie Palomo, 341st District Court Judge

Co-counsel for Defendant:
Juan Francisco Tamez
Law Office of J. Francisco Tamez, PLLC
7913 McPherson Road, Suite 103
Laredo, TX 78045-2807
(956) 753-0003

Appellate Counsel for Defendant:
Samuel V. Houston, III
Houston Dunn, PLLC
4040 Broadway, Suite 440
San Antonio, TX 78209
(210) 775-0882

Counsel for Plaintiffs:
Ronald Rodriguez
Law Offices of Ronald Rodriguez, PC
424 East Del Mar Boulevard
Laredo, TX 78041
(956) 796-1000

Appellate Counsel for Plaintiffs:
Craig S. Smith
14493 S.P.I.D., Suite A, P.M.B. 240
Corpus Christi, TX 78418
(361) 728-8037

2. *ADT Security Services, S.A. De C.V. v. Alert 24 Security, L.L.C.*, No. 2006CVQ001051-D2 (111th Dist. Ct., Webb County, Tex.)

My client, Plaintiff ADT, asserted claims for malicious prosecution and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961, *et seq.*, arising from disputed sales rights of home security systems in Mexico. Defendant Alert 24 Security asserted a counterclaim for quantum meruit for services rendered. I was retained as co-counsel for ADT a few months before a jury trial was scheduled. I attended multiple hearings on pretrial motions and took the deposition of a court-appointed expert witness on Mexican law issues. The case proceeded to a jury trial in 2009. During trial, I questioned multiple witnesses and argued damages in closing arguments. The jury found in favor of ADT on the civil RICO claim, and the trial court entered judgment in favor of Plaintiff for $108 million. The jury also found in favor of Defendant 24 Alert Security on its counterclaim, and the trial court entered judgment in its favor in the amount of $9.1 million. Plaintiff and Defendant both appealed the judgment to the Texas Fourth Court of Appeals. I did not work on the appeal. The parties reached a settlement agreement while the case was on appeal.

Date of representation: 2008 – 2012

Judge: Honorable Raul Vasquez, 111th District Court Judge

Lead Counsel for Plaintiff:
Thomas R. Ajamie
Ajamie, L.L.P.
Pennzoil Place – South Tower
711 Louisiana, Suite 2150
Houston, TX 77002
(713) 860-1600

Lead Counsel for Defendants:
Marcel C. Notzon, III

The Notzon Law Firm
6999 McPherson Road, Suite 325
Laredo, TX 78041
(956) 717-1961

Emilio 'Chito' Davila, Jr.
Law Office of Emilio Davila, Jr.
1112 San Agustin Avenue
Laredo, TX 78040
(956) 723-3639

3. *Perales v. Southland Lloyds Ins. Co.*, No. 06-05-11309-ZCVAJA (365th Dist. Ct., Zavala County, Tex. 2006); 04-10-00626-CV (Tex. App.–San Antonio 2010).

This first-party insurance case involved a dispute about the scope of loss caused by a hailstorm. Plaintiff asserted causes of action for breach of contract and extracontractual claims, including violations of the Texas Insurance Code. I was attorney-in-charge for Defendant Southland Lloyds in multiple lawsuits arising from the same hailstorm in Dimmit County, Texas. I conducted discovery, drafted pleadings and pretrial motions, and was lead counsel in the jury trial. This case was tried to verdict, and we obtained a favorable finding from the Dimmit County jury that our client, Southland Lloyds, did not breach the insurance policy, despite finding a violation of the duty of good faith and fair dealing. We filed a motion with the trial court for judgment in favor of Defendant on the basis that the legal argument that the Defendant could not be liable for the jury's finding of a breach of extracontractual duties, since there was no underlying breach of contract. The trial court agreed and entered judgment in favor of Defendant, notwithstanding the jury's finding of an extracontractual violation. Plaintiff appealed to the Texas Fourth Court of Appeals. During the appellate proceedings, we retained appellate counsel, and I assisted with editing and reviewing the briefing. There was no oral argument. In 2011, before we filed our appellee's brief, the parties reached a settlement agreement by which we jointly asked the Court of Appeals to enter an order reversing the trial court judgment and remanding the case to the trial court for entry of an agreed take-nothing judgment. Accordingly, the case was remanded to the trial court where a final take-nothing judgment was entered by agreement in 2011.

Date of representation: 2006 – 2011

Judge: Honorable Amado Abascal, 365th District Court

Co-counsel for Defendant Southland Lloyds Insurance Company:
Juan Francisco 'Kiko' Tamez
Law Office of J. Francisco Tamez, PLLC
7913 McPherson Road. Suite103
Laredo, TX 78045
(956) 753-0003

Appellate Counsel for Defendant(s):
Sharon E. Callaway
Crofts & Callaway, P.C.
306 Arcadia Place
San Antonio, TX 78209
(210) 824-8466

Counsel for Plaintiff:
Matthew R. Pearson
Pearson Legal, PC
425 Soledad Street, Suite 600
San Antonio, TX 78205
(210) 732-7766

Marc E. Gravely
Gravely P.C.
5 Cowboys Way, Suite 300
Frisco, TX 75304
(214) 225-6681

Shannon E. Loyd
Loyd & Pollum, PLLC
12703 Spectrum Drive, Suite 201
San Antonio, TX 78249
(210) 775-1424

Local Counsel for Plaintiff:
Alfredo Z. Padilla
104 North 5th Street
P.O. Drawer 355
Carrizo Springs, TX 78834
(830) 876-9123

Appellate Counsel for Plaintiff:
Brendan K. McBride
McBride Law Firm
16018 Via Shavano
San Antonio, TX 78249
(210) 386-7357

4. *Cantu vs. Southland Lloyds Ins. Co.*, No. 05-11-11164-ZCV (293rd Dist. Ct., Zavala County, Tex. 2005), *aff'd*, No. 04–09–00705–CV, 2011 WL 1158244 (Tex. App.–San Antonio 2011, pet. denied)

This first party insurance case involved a dispute about the scope of loss caused by a hailstorm. Plaintiff asserted causes of action for breach of contract and extracontractual

claims, including violations of the Texas Insurance Code. I was attorney-in-charge for Defendant Southland Lloyds in multiple lawsuits arising from the same hailstorm in Dimmit County, Texas. I conducted discovery, drafted pleadings and pretrial motions, and was lead counsel in the jury trial. The jury returned a verdict for Plaintiff. We appealed the verdict. During the appellate proceedings, we retained appellate counsel, and I assisted with editing and reviewing the briefing. There was no oral argument. Texas Fourth Court of Appeals affirmed the trial court's judgment. The case settled on appeal in 2011.

Date of representation: 2005 – 2012

Judge: Judge Cynthia Muniz, 293rd District Court

Co-counsel for Defendant Southland Lloyds Insurance Company:
Juan Francisco 'Kiko' Tamez
Law Office of J. Francisco Tamez, PLLC
7913 McPherson Road, Suite103
Laredo, TX 78045-2807
(956) 753-0003

Appellate Counsel for Defendant(s):
Sharon E. Callaway
Crofts & Callaway, P.C.
306 Arcadia Place
San Antonio, TX 78209
(210) 824-8466

Counsel for Plaintiff:
Matthew R. Pearson
Pearson Legal, PC
425 Soledad Street, Suite 600
San Antonio, TX 78205
(210) 732-7766

Marc E. Gravely
Gravely P.C.
5 Cowboys Way, Suite 300
Frisco, TX 75304
(214) 225-6681

Shannon E. Loyd
Loyd & Pollum, PLLC
12703 Spectrum Drive, Suite 201
San Antonio, TX 78249
(210) 775-1424

Local Counsel for Plaintiff:
Alfredo Z. Padilla
104 North 5th Street
P.O. Drawer 355
Carrizo Springs, TX 78834
(830) 876-9123

Appellate Counsel for Plaintiff:
Brendan K. McBride
McBride Law Firm
16018 Via Shavano
San Antonio, TX 78249
(210) 386-7357

5. *A. v. Laredo Indep. Sch. Dist.*, No. 5:05-cv-237, 2007 WL 189458 (S.D. Tex. Jan. 22, 2007)

Parents of an elementary school student asserted various claims against my client, the Laredo Independent School District, including a claim under 42 U.S.C. § 1983, arising from an incident in which the student was assaulted by other students. As chief counsel for Laredo ISD, I filed a motion for judgment on the pleadings pursuant to FRCP 12(c), arguing that the school district could not be held liable for the conduct of the students, who were independent third parties. The motion was granted, and a corresponding final judgment was entered in favor of Laredo ISD.

Date of representation: 2005 – 2007

Judge: U.S. District Judge Micaela Alvarez

Lead Counsel for Plaintiff:
Adan A. Gonzalez, III
4316 Muirfield
San Antonio, TX 78229
(956) 645-1692

6. *Garza v. Laredo Indep. Sch. Dist.*, No. 5:04-cv-137 (S.D. Tex. 2004), *aff'd*, No. 08-40387, 2009 WL 221258 (5th Cir. 2009).

I was attorney-in-charge for Defendant Laredo Independent School District in this case in which Plaintiff Garza, a Mexican American teacher employed by the school district, alleged that he was the subject of discrimination on the basis of national origin and harassment in violation of Title VII. He alleged various perceived wrongful actions against him by employees of the school district. I conducted discovery and drafted pleadings and dispositive motions on behalf of my client. We filed motions to dismiss and for summary judgment, asserting a lack of adverse employment actions and a lack of evidence of discriminatory causal animus. The trial court granted the motion for

summary judgement and entered judgment in favor of our client. Plaintiff filed an appeal. I drafted the appellee's brief. There was no oral argument. The Fifth Circuit affirmed.

Date of representation: 2004 – 2009

Judge: Judge Micaela Alvarez

Plaintiff proceded pro se

7. *Reliable Ambulance Serv., Inc. v. Mercy Hosp. of Laredo*, No. 2000-CVQ-001113-D1 (49th Dist. Ct., Webb County, Tex. 2000), *aff'd*, No.04-02-00188-CV, 2003 WL 21972724 (Tex. App. – San Antonio Aug. 20, 2003).

I was attorney-in-charge for Defendant Medical Ambulance Services, Inc. ("MAS"). Plaintiff Reliable sued MAS, its owners, and Mercy Hospital claiming that the pricing arrangement in the contract for ambulance services between the Defendants violated the anti-kickback provision of the Social Security Act, 42 U.S.C. § 1320a-7b(b). At the trial level, I conducted discovery and drafted motions for my client. The trial judge granted summary judgment in favor of Defendants and Plaintiff appealed. I drafted the appellee's brief on behalf of my client, in coordination with counsel for the co-defendants. I attended oral argument on behalf of my client but did not make arguments, deferring instead to counsel for Mercy Hospital, which was considered the lead defendant. The Texas Fourth Court of Appeals held that the alleged violation of the federal anti-kickback statute did not support a common law cause of action and affirmed summary judgment in favor of Defendants.

Date of representation: 2000 – 2003

Judge: Honorable Manuel R. Flores, 49th District Court Judge

Counsel for Plaintiff:
Andrew M. Greenwell
Harris & Greenwell
800 North Shoreline Boulevard #2800
Corpus Christi, TX 78401
(361) 883-1946

Counsel for Defendant Mercy Hospital of Laredo:
Richard G. Munzinger (deceased)

8. *Alvarez v. Tex. Migrant Council, Inc.*, No. 5:2000-cv-00153 (S.D. Tex. 2000)

Plaintiff was a Mexican citizen and legal permanent resident of the United States. She was an employee of my client, defendant Texas Migrant Council ("TMC"), a nonprofit organization which provided social services to immigrant families. She claimed her supervisor discriminated against her and harassed her because of her national origin and

citizenship in violation of Title VII. I was lead trial counsel and co-counsel with my law partner. I participated in some discovery and prepared pretrial filings such as the joint pretrial report and motion in limine. The case was tried before a jury in 2002. As lead trial counsel, I conducted jury selection, made opening statements and closing arguments, and questioned the majority of the witnesses presented at trial. The jury returned a verdict in favor of TMC.

Date of representation: 2000 – 2002

Judge: Judge Keith P. Ellison

Lead Counsel for Plaintiff:
Juan M. Gonzalez
Law Office of Juan M. Gonzalez
403 West Cypress Street
San Antonio, TX 78212
(210) 587-4002

Lead Counsel for Defendant South Texas Rural Health Services, Inc.:
Mark Price Brewster
Brewster Law Firm
The Oak Ridge Building
11120 Wurzbach Road, Suite 200
San Antonio, TX 78230
(210) 437-1232

Co-counsel for Plaintiff Texas Migrant Council, Inc.:
Sigifredo Perez, III
Kazen, Meurer & Perez LLP
211 Calle del Norte
Laredo, TX 78041
(956) 712-1600

9. *Garcia-Gutierrez v. Interceramic, Inc.*, No. B-98-128 (S.D. Tex. 1998)

Plaintiff was a truck driver who sued Interceramic for personal injuries caused when a load of tile he was hauling shifted during transportation. I was originally retained as co-counsel for Defendant Interceramic. However, shortly before trial, the original lead counsel withdrew, leaving me as attorney-in-charge for pretrial matters and a jury trial in March 2000. The Plaintiff's state law negligence claims were tried to a jury, resulting in a verdict and take-nothing judgment in favor of Defendant Interceramic.

Date of representation: 2000

Judge: Judge Hilda G. Tagle

Lead Counsel for Plaintiff:
John D. Sloan, Jr.
Sloan, Hatcher, Perry, Runge, Robertson & Smith
101 East Whaley Street
P.O. Box 2909
Longview, TX 75601
(903) 757-7000

Co-counsel for Defendant Interceramic:
Sigifredo Perez, III
Kazen, Meurer & Perez LLP
211 Calle del Norte
Laredo, TX 78041
(956) 712-1600

10. *Feldman v. L&M Radiator, Inc.*; No. 90-8316 (210th Dist. Ct., El Paso County, Tex. 1990), *aff'd in part and rev'd in part sub nom. Feldman v. Kohler Co.*, 918 S.W.2d 615 (Tex. App.—El Paso 1996).

I was co-counsel for Defendant/Appellee L&M Radiator. We filed a motion for summary judgment raising the "government contractor defense" on behalf of our client, which manufactured radiators in accordance with designs provide by the military for use in military vehicles. The trial court granted summary judgment as to the design defect and failure to warn claims against L&M. Plaintiff appealed. As an associate attorney at the law firm, I was the primary drafter of the appellee's brief, and I argued the case before the Eighth Court of Appeals. The court of appeals affirmed summary judgment on the design defect claim but reversed on the failure to warn claim.

Date of representation: 1994 – 1996

Judge Presiding: Honorable Sam M. Paxson, 210th District Court Judge

Lead Counsel for Plaintiff:
Michael Y. Saunders
Law Office of Michael Y. Saunders
607 Rowlock Lane
Houston, TX 77079
(281) 589-8938

Lead Counsel for Kohler:
R. Wayne Pritchard
R Wayne Pritchard, P.C.
416 North Stanton Street, Suite 404
El Paso, TX 79901
(915) 533-0080

Co-counsel for Defendant/Appellee L&M Radiator:
Paul M. Bracken
Robles Bracken & Hughes. PLLC
310 North Mesa Street, Suite 700
El Paso, TX 79901
(915) 544-1144

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 United States Magistrate Judge, I have served as a member of the Security Committee of the District Court for the Southern District of Texas. I was recently appointed as a member of the Magistrate Judge Committee for our District.

The majority of my work as a lawyer involved litigation in state and federal courts. As lead counsel in hundreds of cases, I handled discovery matters, drafted pleadings and dispositive motions, and argued those motions in many trial courts throughout South Texas. I also provided general legal advice to institutional and business clients. I advised my clients on a broad range of matters specific to their businesses or operations. For example, I was outside general counsel to the Laredo Independent School District from 1997 to 2018. I provided legal advice and counsel to the board of trustees and administration on issues such as board governance, public information requests, student issues, employee issues and grievances, construction issues, and business transactions. While representing the school district, I handled multiple administrative proceedings before the Texas Education Agency involving the termination or reassignment of contractual employees. For approximately 17 years, until 2018, I was also the Diocesan Attorney for the Catholic Diocese of Laredo, and I handled a similar range of issues for that entity.

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.

I have not taught any courses.

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 would continue to follow the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other relevant ethical laws, rules, or canons. For a period of time, I would recuse myself from all cases involving my former firm, Kazen, Meurer & Perez, LLP. I would also recuse from any case involving any former clients that I represented as an attorney and from any case involving a party to which I was adverse in any matter I handled as an attorney. I would also recuse from any case handled by my brother, who practices law in Austin, Texas, and may occasionally litigate cases in the Southern District of Texas. Finally, I would recuse from any case involving a business or entity employing my wife, siblings, or other close family members.

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 continue to evaluate and resolve any potential conflict of interest by applying the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other relevant ethical laws, rules, or canons.

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

As a United States Magistrate Judge from June 2018 to the present, I have been unable to take on direct pro bono representations. While in private practice, I regularly handled pro bono work and projects, and I devoted substantial time to such work over the course of my career. For example, while practicing law in El Paso, Texas, I volunteered as a mediator and third-party neutral at the county dispute resolution center, and I also actively participated in the pro bono programs of the El Paso Bar Association. As an attorney in Laredo, Texas, I served as an officer with the Laredo-Webb County Bar Association, and I was active in their pro bono activities at that time. Over the years, I provided free or reduced-price legal advice and representation to numerous clients on various legal issues. As a lawyer and as a judge, I have participated in multiple mock trials with local students.

Throughout my career, I also have sought to serve the community in other ways. I regularly made financial contributions to various fundraisers benefiting local low-income students. My law firm donated annually to scholarships for high school students and students at Laredo College. Since 2017, I have been a volunteer member of the board of directors of Bethany House of Laredo, Inc. The mission of this not-for-profit organization is to provide hot meals free of charge for the homeless, disabled, indigent, and veterans; to provide shelter for the homeless and to maintain a clothing center providing free clean clothes for the homeless, indigent school children, and families in crisis. I also have been an active volunteer and board member for the Border Olympics for over ten years. Border Olympics is a not-for-profit organization that annually hosts tournaments for student athletes in various sports at the high school and college level throughout Texas and the United States.

26. **Selection Process**:

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

Investigation personnel concerning your nomination.

On April 8, 2022, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Southern District of Texas. On March 17, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. On May 15, 2023, I interviewed separately with Senators Cornyn and Cruz. On June 12, 2023, I interviewed with attorneys from the White House Counsel's Office. Since June 20, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 30, 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
Judge John Andrew Kazen
Nominee to be a United States District Judge for the Southern District of Texas

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. I believe that an interpretation of the Constitution should be based on following and applying binding precedent without consideration of my personal morals, values, or beliefs.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's 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, and I do not have any information on the context in which it was made. To the extent that this statement suggests that lower court judges should attempt to circumvent Supreme Court precedent, I disagree with it. As a magistrate judge, I have not written any opinions that I expected to be reversed. To the contrary, I strive to correctly interpret and apply binding Supreme Court and Fifth Circuit precedent.

3. **Please describe the relevant law governing when a federal court may entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court.**

   Response: Title 28 United States Code, Section 2254 provides:

   > The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

   28 U.S.C § 2254(a). A federal court may not grant habeas corpus relief to a state prisoner unless he "has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). To prevail on a habeas petition of this type, the petitioner must establish that the state court decision "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

   Additionally, an application based on a claim that was adjudicated on the merits in state court proceedings cannot be granted unless the adjudication of the claim resulted in a

decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. § 2254(d).

4. **Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.**

Response: Title 28 United States Code, Section 2255 provides:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C § 2255(a). A prisoner may also challenge the constitutionality of their conviction or sentence under 28 U.S.C. § 2241 in a civil action against the warden of the facility in which they are housed. These civil suits are filed in the jurisdiction where the prison is located. *See* 28 U.S.C. § 2241(d).

5. **Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.**

Response: In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina*, the Supreme Court held that the race-based admissions programs at Harvard College and University of North California violated Title VI and the Equal Protection Clause of the Fourteenth Amendment, respectively. The Supreme Court concluded that the race-based admissions programs of both schools failed strict scrutiny, reviewing the programs in light of the risks and limits set forth in *Grutter v. Bollinger*, 539 U.S. 306 (2003).

6. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?**

Response: Yes.

If yes, please list each job or role where you participated in hiring decisions.

Response: As a partner of the law firm Kazen, Meurer & Perez, LLP, I was regularly involved in hiring decisions for staff and associate attorneys. As a magistrate judge, I was involved in the hiring of my case manager, and I make annual hiring decisions regarding law clerks.

7. **Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

   Response: No.

8. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

   Response: No.

9. **Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

   If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

   Response: No. Not to my knowledge.

10. **Under current Supreme Court and Fifth Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?**

    Response: Yes. *See, e.g.*, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023); *Fisher v. Univ. of Texas at Austin,* 758 F.3d 633 (5th Cir. 2014), *aff'd*, 579 U.S. 365 (2016).

11. **Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

    Response: The Supreme Court held that a business may refuse, on religious grounds, to provide services to same-sex couples when doing so would require the business to speak a message with which it disagrees. The Court found that the wedding websites the plaintiff sought to create qualified as pure speech protected by the First Amendment. The Court grounded its analysis in its compelled-speech precedents within its First Amendment jurisprudence. The Court held that the First Amendment prohibits Colorado from forcing a website designer to create expressive designs speaking messages with which the designer disagrees.

12. **In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."**

Is this a correct statement of the law?

Response: The Supreme Court recently referenced this quote in *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023), and it is my understanding that *Barnette* remains good law. To the extent this question asks for my personal opinion as to the correctness of Supreme Court precedent, as a sitting magistrate judge and district court nominee, I am generally prohibited from doing so. If confirmed as a district judge, I will faithfully apply all binding precedent of the Supreme Court to the matters that come before me.

13. How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?

Response: If I were presented with the question of whether a law that regulates speech is "content-based" or "content-neutral," I would apply binding Supreme Court and Fifth Circuit precedent, including *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015) and *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61 (2022). In *Reed*, the Supreme Court held that "[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." 576 U.S. at 163 (citations omitted). Pursuant to *Reed*, "the crucial first step in the content-neutrality analysis" is "determining whether the law is content neutral on its face." *Id.* at 165. If is determined that the law is neutral on its face, I would then consider "the law's justification or purpose" to determine whether it is "content-based." *Id.* at 166.

14. What is the standard for determining whether a statement is not protected speech under the true threats doctrine?

Response: The Supreme Court has held that "[t]rue threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'" *Counterman v. Colorado*, 600 U.S. 66, 74 (2023). The First Amendment "requires proof that the defendant had some subjective understanding of the threatening nature of his statements," but "a mental state of recklessness is sufficient." *Id.* at 2111–12. The government must show "that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Id.* But the First Amendment requires no more than a recklessness mens rea standard. *Id.* at 2113.

15. 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: The Supreme Court has identified factual matters as "questions of who did what, when or where, how or why." *E.g., U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). Furthermore, Black's Law Dictionary defines "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." BLACK'S LAW DICTIONARY (11th ed. 2019). The Circuit

Courts of Appeal make judgments on findings of fact and conclusions of law in the context of determining the scope of appellate review. In *SEC v. Fox*, 855 F.2d 247 (5th Cir. 1988), the Fifth Circuit said, "with regard to ... determining whether mixed questions of law and fact are to be treated as questions of law or fact for purposes of appellate review, that sometimes the decision '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.'" (citing *Pierce v. Underwood*, 487 U.S. 552 (1988)).

16. Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?

Response: The factors that a judge must consider when making sentencing decisions are set forth in 18 U.S.C. § 3553(a). The statute does not provide that any one factor is more important than another. If confirmed, I would follow and apply binding precedent from the Supreme Court and the Fifth Circuit concerning those factors.

17. Please identify a Supreme Court decision from the last 50 years that you think is particularly well reasoned and explain why.

Response: As a sitting magistrate judge and district court judge nominee, the Code of Conduct for United State Judges precludes me from offering commentary concerning any personal opinions I might have about Supreme Court precedent because related issues could come before me, and I would not want litigants to think I had prejudged those issues. If confirmed as a district court judge, I will faithfully apply all Supreme Court and Fifth Circuit precedent without regard to any personal views I might have.

18. Please identify a Fifth Circuit judicial opinion from the last 50 years that you think is particularly well reasoned and explain why.

Response: As a sitting magistrate judge and district court judge nominee, the Code of Conduct for United State Judges precludes me from offering commentary concerning any personal opinions I might have about Fifth Circuit precedent because related issues could come before me, and I would not want litigants to think I had prejudged those issues. If confirmed as a district court judge, I will faithfully apply all Supreme Court and Fifth Circuit precedent without regard to any personal views I might have.

19. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.

Response: Section 1507 of Title 18 provides that, "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."

20. Is 18 U.S.C. § 1507 constitutional?

Response: I am unaware of any precedent of the United States Supreme Court or of the Fifth Circuit holding that 18 U.S.C. § 1507 is constitutional on its face. In *Cox v. Louisiana*, 379 U.S. 559, 561–64 (1965), the Supreme Court held that a Louisiana statute modeled after a bill pertaining to the federal judiciary, later enacted as 18 U.S.C. § 1507, was constitutionally valid on its face. Moreover, as a current magistrate judge and district court nominee, the Code of Conduct for United State Judges precludes me from offering personal opinions I might have about the constitutionality of a federal statute because related issues could come before me, and I would not want litigants to think I had prejudged those issues. If confirmed, and if confronted with a constitutional challenge to section 1507, I will faithfully apply binding precedent.

21. Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:

a. Was *Brown v. Board of Education* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. However, there are a small number of cases and areas of law that are so well settled and unlikely to be litigated further that an opinion on those areas is not likely to erode public confidence in the judicial system. Consistent with past judicial nominees, I believe that I am allowed to opine on the correctness of *Brown v. Board of Education* and state that I believe it was correctly decided.

b. Was *Loving v. Virginia* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. However, there are a small number of cases and areas of law that are so well settled and unlikely to be litigated further that an opinion on those areas is not likely to erode public confidence in the judicial system. Consistent with past judicial nominees, I believe that I am allowed to opine on the correctness of *Loving v. Virginia* and state that I believe it was correctly decided.

c. Was *Griswold v. Connecticut* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See*

Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Griswold v. Connecticut* and all binding Supreme Court precedent to any applicable case presented before me.

d. Was *Roe v. Wade* correctly decided?

Response: The Supreme Court recently overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). *Dobbs* is binding precedent, and I will apply it fully and faithfully.

e. Was *Planned Parenthood v. Casey* correctly decided?

Response: The Supreme Court recently overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). *Dobbs* is binding precedent, and I will apply it fully and faithfully.

f. Was *Gonzales v. Carhart* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Gonzales v. Carhart* and all binding Supreme Court precedent to any applicable case presented before me.

g. Was *District of Columbia v. Heller* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it

is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *District of Columbia v. Heller* and all binding Supreme Court precedent to any applicable case presented before me.

h. Was *McDonald v. City of Chicago* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *McDonald v. City of Chicago* and all binding Supreme Court precedent to any applicable case presented before me.

i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* and all binding Supreme Court precedent to any applicable case presented before me.

j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *New York State Rifle & Pistol Association v. Bruen*

and all binding Supreme Court precedent to any applicable case presented before me.

k. Was *Dobbs v. Jackson Women's Health* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Dobbs v. Jackson Women's Health* and all binding Supreme Court precedent to any applicable case presented before me.

l. Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* and all binding Supreme Court precedent to any applicable case presented before me.

m. Was *303 Creative LLC v. Elenis* correctly decided?

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district

judge, I will faithfully apply *303 Creative LLC v. Elenis* and all binding Supreme Court precedent to any applicable case presented before me.

22. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?

Response: When considering the constitutionality of a regulation on firearms, district courts must consider whether "the Second Amendment's plain text covers the restricted conduct," and, if so, whether the government has carried its burden "to demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022); *see also McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *see also United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023).

23. 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.

24. 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 the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

Response: No.

25. 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.

26. 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.

27. 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.

28. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: On April 8, 2022, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Southern District of Texas. On March 17, 2023, I interviewed with the Federal Judiciary Evaluation

Committee established by Senators Cornyn and Cruz. On May 15, 2023, I interviewed separately with Senators Cornyn and Cruz. On June 12, 2023, I interviewed with attorneys from the White House Counsel's Office. Since June 20, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 30, 2023, the President announced his intent to nominate me. On September 11, 2023, the President sent my nomination to the United States Senate.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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 or include any particular case or type of case in your questionnaire?

Response: No.

35. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

Response: On April 8, 2022, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Southern District of Texas. On March 17, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. On May 15, 2023, I interviewed separately with Senators Cornyn and Cruz. On June 12, 2023, I interviewed with attorneys from the White House Counsel's Office. Since June 20, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 30, 2023, the President announced his intent to nominate me. On September 11, 2023, the President sent my nomination to the United States Senate.

36. Please explain, with particularity, the process whereby you answered these questions.

Response: I received these questions from the Office of Legal Policy at the Department of Justice on October 11, 2023. I prepared my responses and submitted a draft of those responses to the Office of Legal Policy. I made additional minor revisions in response to comments from the Office of Legal Policy. I then finalized and submitted these responses.

Senate Judiciary Committee
Nominations Hearing
October 4, 2023
Questions for the Record
Senator Amy Klobuchar

John A. Kazen, nominee to be U.S. District Court Judge for the Southern District of Texas

Since 2018, you have served as a magistrate judge in the Southern District of Texas. You were appointed to serve as a magistrate by the sitting Article III judges of the court, and in this capacity you have presided over more than 1,800 misdemeanor criminal cases as well as several civil trials.

- **What are some of the most valuable lessons that you have learned while serving as a magistrate judge?**

  Response: My service as a magistrate judge since June 2018 has provided me with a broad range of experience in criminal and civil law issues. I have learned that it is important to preside over cases with patience for the attorneys and litigants who appear in my court and that it is important to give the attorneys and litigants an opportunity to fully explain their positions and arguments to the court. I also appreciate that as a judge I have the opportunity to serve as a mentor and role model for the lawyers who appear in my court and the law clerks who work in my chambers.

Senator Mike Lee
Questions for the Record
John Andrew Kazen, Nominee to the United States District Court for the Southern District of Texas

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

   Response: My judicial philosophy has been to faithfully apply the law to the facts of the case before me, to decide cases and legal issues without bias or prejudice, to treat the litigants with respect, and to provide them an opportunity to be heard.

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

   Response: Initially, I would look to precedent of the Supreme Court and the Fifth Circuit for their interpretation of the federal statute. If there is no binding precedent, then I would determine if the statute is ambiguous or unambiguous. If it is unambiguous, I would interpret the statute by looking at its plain meaning. If the statute is ambiguous, I would apply the applicable canons of statutory construction and consider persuasive precedent from other courts and the legislative history of the statute, keeping in mind the Supreme Court's admonition that "legislative history is itself often murky, ambiguous, and contradictory." *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**:** Initially, I would consult precedent of the Supreme Court and the Fifth Circuit and apply their interpretation of a constitutional provision. However, if it is a matter of first impression, I would look to the plain meaning of the provision and then apply interpretive principles, following the methods of construction and interpretation employed by the Supreme Court.

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

   Response: Supreme Court precedent instructs us that the plain meaning and original meaning of the text of a constitutional provision are essential in interpreting the Constitution. The Supreme Court has directed lower courts to look at the plain text and original meaning in several recent cases and in certain contexts. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *Kennedy v. Bremerton School District*, 142 S. Ct 2407 (2022); *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). Thus, when faced with interpreting the Constitution on an unprecedented matter, I would apply the plain meaning of the text and then look to interpretive principles described in recent Supreme Court and Fifth Circuit precedent.

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 determine whether there is binding Supreme Court or Fifth Circuit precedent interpreting the relevant text. If there is not, I next consider the plain meaning of the text. If the text is not ambiguous, then its plain meaning should resolve the interpretation of the statute. Please also see my response to Question 2.

6. **Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

   Response: The Supreme Court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738 (2020). If confirmed as a district judge, I will continue to faithfully apply Supreme Court precedent as it applies to statutory and constitutional interpretation.

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

   Response: To meet the constitutional requirements for standing, a party must establish that it has a genuine stake in the outcome of a case because (1) there is a concrete and particularized injury; (2) that injury is traceable to the allegedly unlawful action; and (3) the injury is redressable by a favorable judicial decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

8. **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 interpreted the Necessary and Proper Clause in Article I, Section 8 of the Constitution to mean Congress has the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8, cl. 18; *see McCulloch v. Maryland*, 17 U.S. 316, 324 (1819) ("Congress is authorized to pass all laws 'necessary and proper' to carry into execution the powers conferred on it.").

9. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

   Response: In *Nat. Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012), the Supreme Court held that the "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." If faced with this issue as a judge, I would follow Supreme Court and Fifth Circuit precedent.

10. **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). Some examples of these rights are the right to privacy (*Griswold v. Connecticut*, 381 U.S. 479 (1965)); the right to marry (*Loving v. Virginia*, 388 U.S. 1 (1967) and *Obergefell v. Hodges*, 576 U.S. 644 (2015)); the right to travel (*Kent v. Dulles*, 357 U.S. 116 (1958)); the right to have children (*Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942)); and the right to educate your children (*Meyer v. Nebraska*, 262 U.S. 390 (1923)).

11. What rights are protected under substantive due process?

Response: The Supreme Court has held that the rights protected under substantive due process consist of unenumerated fundamental rights that 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 have been identified in my response to Question 10.

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, 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 *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court held that a state law banning the use of contraceptives by married couples was a violation of substantive due process under the Constitution. It further held in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), that the Constitution does not protect the economic rights at stake in *Lochner v. New York*. If confirmed as a district court judge, I will be bound to follow Supreme Court precedent.

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

Response: The Supreme Court has held that there are three broad categories of activity that Congress may regulate under its commerce power: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and (3) activities that "substantially affect interstate commerce." *See United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has described "traditional indicia of suspectness" to include groups that "possess an immutable characteristic determined solely by the accident of birth" or are "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 quotation marks and citations omitted). Race, religion, national origin, and alienage have been identified as suspect classes subject to strict scrutiny. *See, e.g., City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: The Supreme Court has stated that the "separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch," *United States v. Lopez*, 514 U.S. 549, 552 (1995). The Framers regarded the checks and balances as "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other," *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). At the same time, the Constitution does not require the three branches of government to "operate with absolute independence." *United States v. Nixon*, 418 U.S. 683, 707 (1974).

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 carefully consider the arguments and briefing submitted by the parties and the record in the case. I would apply binding precedent of the Supreme Court and the Fifth Circuit, including the potential applicability of Supreme Court precedent such as *Nixon v. United States*, 506 U.S. 224, 234-35 (1993); *Marbury v. Madison*, 5 U.S. 137 (1803); and *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: Generally, judicial decisions should not be based on a judge's personal feelings, opinions, or beliefs. However, I believe it is important for litigants to feel that they have been treated fairly and have had a fair opportunity to be heard in court, and empathy may have a role in understanding the litigants' perceptions of their treatment in my court.

18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: A judge should strive to avoid both outcomes by faithfully following and applying the law to the facts of the case before the court. If appointed, I will follow the precedent of the Supreme Court and the Fifth Circuit.

19. 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 trend described in this question, and I therefore do not have sufficient information on which to base an opinion about this subject. If confirmed as a district court judge, I would be required to decide each case on its own merit, following binding Supreme Court and Fifth Circuit precedent and applying the law to the particular facts of the case.

20. 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." Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary further 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." 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.")

21. 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: The Constitution requires all government officials, including elected and appointed officials, to take an oath to uphold the Constitution. U.S. Const., art. VI, § 3. The Supreme Court has further explained that state executive and legislative officials do not have authority to nullify a judgment of the courts of the United States. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

22. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: I generally understand that in Federalist 78, Hamilton expressed his belief that it is the role of the federal courts to interpret and apply the law, while the role of the legislative and executive branches is to make or enforce the law. It is my position that it is not the role of judges to make laws but instead and interpret the law and apply it to the facts of the case before me.

23. 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: District court judges have a duty to follow and apply binding Supreme Court and circuit court precedent. In the absence of precedent, a district judge must always strive to render decisions in accordance with the Constitution. If there is no precedent that squarely controls the issue being considered, I would utilize the constitutional framework employed by the Supreme Court and Fifth Circuit in the most similar cases.

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

Response: A defendant's group identity(ies) should not play any factor in sentencing. The factors relevant to sentencing are those set forth in 18 U.S.C. 3553(a), which I will apply if confirmed.

25. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not familiar with this statement by the Biden Administration. I have not developed my own personal definition of equity. The definition of "equity" in Black's Law Dictionary includes "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019). I would fully and faithfully apply any applicable binding Supreme Court and Fifth Circuit precedent to decide any case involving this issue that properly comes before me.

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

Response: See my answer to Question 25. 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). While I am not aware of any Supreme Court or Fifth Circuit precedent comparing these two concepts, I would fully and

faithfully apply any applicable binding Supreme Court and Fifth Circuit precedent to decide any case involving this issue that properly comes before me.

27. Does the 14th 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 14th Amendment provides that, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. The Equal Protection Clause does not specifically refer to "equity." If I am confirmed as a district court judge, it will be my duty to follow and apply Supreme Court and Fifth Circuit precedent to all cases and issues that come before me.

28. How do you define "systemic racism?"

Response: The term "systemic racism" means different things to different people, and I have not developed my own specific definition of that term. Nor am I aware of any Supreme Court or Fifth Circuit precedent that defines "systemic racism." Cambridge Dictionary defines "systemic racism" as "policies and practices that exist throughout a whole society or organization and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race." Cambridge Dictionary. Merriam-Webster's Dictionary defines it "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).

29. How do you define "critical race theory?"

Response: I have not developed my own specific definition of "critical race theory. Black's Law Dictionary defines "critical race theory" as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities" and "[t]he body of work produced by adherents to this theory." Black's Law Dictionary (11th ed. 2019).

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

Response: Please see my responses to Questions 28 and 29.

Questions from Senator Thom Tillis
for John Andrew Kazen, nominee to U.S. District Court for the Southern District of Texas

1. **Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

   Response: I believe a judge's personal views and background are irrelevant in interpreting and applying the law. I believe that judges are obligated to faithfully apply the law to the facts of the case before them without regard to the judge's personal views.

2. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: I believe impartiality is an expectation for a judge and that a judge must disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

3. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: "Judicial activism" is defined by Black's Law Dictionary as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 2019). I do not consider judicial activism appropriate.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Yes, I believe that a judge's faithful interpretation of the law may sometimes result in what someone may consider an undesirable outcome. As a judge, I am required to faithfully follow the law and apply the law impartially to the facts of the particular case before me. I accept that doing so may result in an undesirable result for a party that is before the court.

6. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: If I am confirmed as a district court judge, I will faithfully follow and apply all binding precedent interpreting the Second Amendment, including the Supreme Court's holdings in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

7. 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: When considering cases involving the issue of qualified immunity, I follow and apply binding Supreme Court and Fifth Circuit precedent. Pursuant to such precedent, the doctrine of qualified immunity exists to "protect[ ] government officials from civil damages liability when their actions could reasonably have been believed to be legal. This immunity protects all but the plainly incompetent or those who knowingly violate the law. Accordingly, we do not deny immunity unless existing precedent . . . placed the statutory or constitutional question beyond debate. *Anderson v. Valdez*, 845 F.3d 580, 559–600 (5th Cir. 2016) (cleaned up). Courts apply a two-prong analysis to determine if an officer is entitled to qualified immunity. "An officer merits qualified immunity unless (1) he violated a statutory or constitutional right of the plaintiff and (2) the right was clearly established at the time of the violation." *Betts v. Brennan*, 22 F.4th 577, 582 (5th Cir. 2022) (citation and internal quotations omitted); *Anderson*, 845 F.3d at 600.

8. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: As a current magistrate judge and nominee for district court judge, it would not be appropriate for me to comment on whether current qualified immunity jurisprudence "provides sufficient protection" for law enforcement officers in certain circumstances. There are multiple cases involving qualified immunity pending in cases I preside over and the issue regularly arises in cases I preside over. Therefore, it is not appropriate for me to comment on this question under the judicial codes of conduct. *See* Code of Conduct for United States Judges, Canon 3(A). If confirmed, I would faithfully follow and apply binding precedent from the Supreme Court and the Fifth Circuit to any case that comes before me.

9. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see my responses to Questions 7 and 8.

10. What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?

Response: The Supreme Court has stated that federal patent laws promote the progress of science and the useful arts by offering inventors exclusive rights for a limited period as an incentive for their inventiveness and research efforts. *Diamond v. Chakrabarty*, 447 U.S. 303, 307, 100 S. Ct. 2204, 2206–07 (1980). The methods of enforcement of IP rights are actively being litigated in the federal courts and discussed by policymakers. As a sitting magistrate judge and as a nominee for district court judge, it would be improper for me to publicly comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A).

If confirmed, I would faithfully follow and apply binding precedent from the Supreme Court, the Federal Circuit, and the Fifth Circuit to any IP case that comes before me.

11. In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"

Response: Legal issues regarding proper venue and the application of venue statutes arise regularly in federal courts. In *Ferens v. John Deere Co.*, 494 U.S. 516, 527 (1990), the Supreme Court considered the concept of forum shopping in relation to Title 28 U.S.C. § 1404 and the "policy against forum-shopping" set forth in *Van Dusen v. Barrack*, 376 U.S. 612 (1964). As a sitting magistrate judge and as a nominee for district court judge, it would be improper for me to comment on the correctness of legal precedent regarding choice of venue. *See* Code of Conduct for United States Judges, Canon 3(A). If confirmed, I would be required to apply and follow all binding precedent and federal rules.

12. 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 shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?

Response: As a sitting magistrate judge and as a nominee for district court judge, it would be improper for me to comment on this correctness of current Supreme Court jurisprudence in this area of law. *See* Code of Conduct for United States Judges, Canon 3(A). If confirmed, I would faithfully follow and apply binding precedent from the Supreme Court and the Federal Circuit on 35 U.S.C. § 101 to the cases that come before me.

CHAIR
Hon. Ann Claire Williams (Ret.)
acwilliams@jonesday.com
(312) 269-1575

VICE CHAIR
David L. Brown
Dlbrown@hmrlawfirm.com
(515) 244-2141

FIRST CIRCUIT
Kay H. Hodge
khodge@scmllp.com
(617) 542-6789

SECOND CIRCUIT
Dana M. Hrelic
dhrelic@pullcom.com
(860) 424-4382

THIRD CIRCUIT
G. Glennon Troublefield
gtroublefield@carellabyrne.com
(973) 994-1700

FOURTH CIRCUIT
Pamela J. Roberts
Pamela.Roberts@bowmanandbrooke.com
(803) 726-7420

FIFTH CIRCUIT
Michael D. Hunt
Michael.hunt@phelps.com
(225) 346-0285

SIXTH CIRCUIT
Khalilah V. Spencer
kspencer@honigman.com
(313) 465-7654

SEVENTH CIRCUIT
Nigel F. Telman
ntelman@proskauer.com
(312) 962-3548

EIGHTH CIRCUIT
Sonia Miller-Van Oort
Soniamv@sapientialaw.com
(612) 756-7125

NINTH CIRCUIT
John C. Dwyer
dwyerjc@cooley.com
(650) 843-5228

Eric S. Casher
ecasher@meyersnave.com
(510) 808-2000

TENTH CIRCUIT
Jennifer H. Weddle
Weddlej@gtlaw.com
(303) 572-6500

ELEVENTH CIRCUIT
Suzanne E. Gilbert
Suzanne.Gilbert@hklaw.com
(407) 244-1142

D.C. CIRCUIT
Michael L. Huang
mhuang@lpmlaw.com
(734) 678-1531

FEDERAL CIRCUIT
Joseph Michael Drayton
Jdrayton@cooley.com
(212) 479-6000

SPECIAL ADVISORS
Peter Bennett
pbennett@thebennettlawfirm.com
(207) 831-9999

Vincent Chang
vchang@wmd-law.com
(212) 382-3300

Susan Saltzstein
Susan.Saltzstein@skadden.com
(212) 735-4132

STAFF COUNSEL
Denise A. Cardman
Denise.Cardman@Americanbar.org

AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
Hon. Ann Claire Williams (Ret.)
Jones Day
110 North Wacker Drive, Suite 4800
Chicago, Illinois 60606
acwilliams@jonesday.com

October 2, 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 John A. Kazen to the United States District Court for the Southern District of Texas

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 John A. Kazen, who has been nominated by the President to the United States District Court for the Southern District of Texas. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. A substantial majority of the Standing Committee determined that Magistrate Judge Kazen is **"Well Qualified,"** and a minority is of the opinion that he is **"Qualified"** to serve on the United States District Court for the Southern District of Texas. One committee member recused from voting due to a conflict. The majority rating represents the Standing Committee's official rating.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Magistrate Judge John A. Kazen (*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*)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Shanlyn Alohakeao Souza Park
   Shanlyn Alohakeao Souza
   Shan Park (nickname)
   Lyn Souza (childhood nickname)

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

   United States District Judge, United States District Court, District of Hawaii

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.

   First Circuit Court
   Ka'ahumanu Hale
   777 Punchbowl Street
   Honolulu, Hawai'i 96813

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

   1969; Honolulu, Hawai'i

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.

   1991 – 1995, William S. Richardson School of Law, University of Hawai'i; J.D., 1995

   1987 – 1991, Chaminade University of Honolulu; B.A. in English (*cum laude*), 1991

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

   2021 – present

State of Hawai'i Judiciary
777 Punchbowl Street
Honolulu, Hawai'i 96813
Circuit Court Judge, First Circuit, State of Hawai'i

2021
Gallagher Kane Amai & Reyes
745 Fort Street Mall, Suite 1550
Honolulu, Hawai'i 96813
Of Counsel

2017 – 2021
McCorriston Miller Mukai MacKinnon LLP
500 Ala Moana Boulevard, Building 5, 4th Floor,
Honolulu, Hawai'i 96813
Partner (2019 – 2021)
Of Counsel (2017 – 2018)

1997 – 2017
Federal Public Defender, District of Hawai'i
300 Ala Moana Boulevard, Room 7-104
Honolulu, Hawai'i 96850
Senior Litigator (2013 – 2017)
Assistant Federal Public Defender (1997 – 2013)

1996 – 1997
Hisaka Stone & Goto
737 Bishop Street
Honolulu, Hawai'i 96813
Associate Attorney

1993 – 1996
United States Magistrate Judge Francis I. Yamashita, District of Hawaii
300 Ala Moana Boulevard, Room C-338
Honolulu, Hawai'i 96850
Law Clerk (1995 – 1996)
Extern (1993 – 1995) (uncompensated)

1994 – 1995
Hawai'i Civil Rights Commission
830 Punchbowl Street
Honolulu, Hawai'i 96813
Law Clerk

1992 – 1993; 1990 – 1991
Tam & O'Conner

(Formerly Moon, O'Connor, Tam & Yuen)
220 South King Street, 20th Floor
Honolulu, Hawai'i 96813
Law Clerk (1992 – 1993)
Receptionist/Secretary (1990 – 1991)

Teaching Affiliations:

Spring Semesters 2001 – 2006
William S. Richardson School of Law, University of Hawai'i
2515 Dole Street
Honolulu, Hawai'i 96822
Adjunct Professor

Other Affiliations:

2018 – 2023
Egan Inoue Fit Body Bootcamp
1212 Punahou Street
Honolulu, Hawai'i 96826
Volunteer Trainer (2020 – 2023)
Trainer (2018 – 2020)

2017 – 2021
United States District Court, District of Hawaii
300 Ala Moana Boulevard, Room C-338
Honolulu, Hawai'i 96850
Criminal Justice Panel Attorney (CJA)

Other Affiliations (uncompensated):

2017 – 2021
United States District Court, District of Hawai'i
300 Ala Moana Boulevard, Room C-338
Honolulu, Hawai'i 96850
Lawyer Representative (2019 – 2021)
CJA Representative for the Kapilipono Program (2019 – 2020)
Pro Bono Counsel (2020)

2021
Hawai'i State Bar Foundation
1100 Alakea Street
Honolulu, Hawai'i 96813
Board Member

2021

Legal Aid Society of Hawai'i
924 Bethel Street
Honolulu, Hawai'i 96813
Board Member

2008 – 2021
Project Focus Hawai'i
(Organization has ceased operating)
Honolulu, Hawai'i
Vice President and Secretary

2011 – 2016
Sacred Hearts Academy Board of Directors
3253 Waialae Avenue
Honolulu, Hawai'i 96816
Chairman (2015 – 2016)
Vice Chairman (2014 – 2015)
Board Member (2011 – 2014)

2009 – 2010
Le Jardin Academy Parent Facility Association
917 Kalanianaole Highway
Kailua, Hawai'i 96734
Junior School Representative

2006 – 2010
The Research Corporation of the University of Hawai'i
1601 East-West Road, 4th Floor Burns Hall, Makai Wing
Honolulu, Hawai'i 96848
Board Member

2007 – 2010
HUGS Help, Understanding & Group Support
3636 Kilauea Avenue
Honolulu, Hawai'i 96816
Board Member

1994 – 1995
William S. Richardson School of Law, University of Hawai'i, Student Bar Association
2515 Dole Street
Honolulu, Hawai'i 96822
President

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

selective service.

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

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

   United States District Court, District of Hawaii, special recognition for providing pro bono services (2021)

   Sisters of the Sacred Hearts, recognition for outstanding service as a board member (2017)

   Chaminade University of Honolulu
   Graduated *cum laude* (1991)

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

   Access to Justice, Attorney Volunteer (2017 – 2021)

   Federal Bar Association – Hawai'i Chapter (2018 – present)

   Hawai'i State Bar Association (1995 – present)

   Hawai'i State Bar Foundation, Board Member (2021)

   Legal Aid Society of Hawai'i, Board Member (2021)

   National Asian Pacific American Bar Association (2020 – present)

   Native Hawaiian Bar Association (2023 – present)

   United States District Court, District of Hawaii, Lawyer Representative (2019 – 2021)

10. **Bar and Court Admission**:

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

       Hawai'i, 1995

       There have been no lapses in membership.

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

Supreme Court of the United States, 2002
United States Court of Appeals for the Ninth Circuit, 1998
United States District Court, District of Hawaii, 1995

There have been no lapses in membership.

11. **Memberships**:

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

Daughters of Hawai'i, Member and Volunteer (2008 – present)

Elks Lodge 616 (2023 – present)

Ka Ulukoa Volleyball Institute, Team Parent (2013 – 2021)

Mid-Pacific Country Club (2019 – present)

The Pacific Club (2019 – present)

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

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, 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.

None.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

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

October 27, 2021: I delivered a virtual speech before the Senate Committee on Judiciary regarding my judicial nomination for Circuit Court Judge for the First Circuit, State of Hawai'i. Video available at https://www.youtube.com/watch?v=uHJL9EVNou4&t=4973s.

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

I have searched my files and electronic databases in an effort to identify events responsive to this question. I have located the events listed below, but there may be others I have been unable to identify.

April 1, 2023, and April 11, 2022: Mock Court Judge, Hawai'i State Bar Association, Young Lawyer's Division (HSBA YLD) Mock Trial, Honolulu, Hawai'i. I judged the HSBA YLD high school mock trial competitions in the statewide semi-final round. I have no notes, transcript, or recording. The address for the HSBA YLD is 1100 Alakea Street, Honolulu, Hawai'i 96813.

January 11, 2023: Presenter, "How to prepare a closing argument," Hawai'i Federal Trial Academy, Hawai'i Chapter of the Federal Bar Association and the United States District Court, District of Hawaii, Honolulu, Hawai'i. Power Point supplied.

August 2, 2022 and June 27, 2017: Speaker, Changing Faces Women's Leadership Seminar, East-West Center, Honolulu, Hawai'i. The speech was on five key qualities of being a good leader. I have no notes, transcript, or recording. The address for the East-West Center is 1601 East-West Road, Honolulu, Hawai'i 96848.

April 11, 2022: Speaker, Pauoa Elementary School Career Day, Honolulu, Hawai'i. I spoke to the kindergarten class about the responsibilities and duties of a state court judge. I have no notes, transcript, or recording. The address for Pauoa Elementary School is 2301 Pauoa Road, Honolulu, Hawai'i 96813.

February 11, 2022: Keynote Speaker, United States District Court, District of Hawaii Kapilipono Program, Honolulu, Hawai'i. I spoke at the program's graduation ceremony and talked about each graduate's achievements and the panel member's hopes for their futures. I have no notes, transcript, or recording. The address for the United States District Court, District of Hawaii is 300 Ala Moana Boulevard, Room C-338, Honolulu, Hawai'i 96850.

December 16, 2021: Speaker, Investiture of Shanlyn A. S. Park, Circuit Court Judge for the First Circuit, State of Hawai'i, Honolulu, Hawai'i. I acknowledged and thanked the individuals who supported me in my career and my nomination. I have no notes or transcript, or recording. My speech occurred at the Hawai'i Supreme Court and its address is 417 South King Street, Honolulu, Hawai'i 96813.

October 11, 2021: Speaker, Board of the Hawai'i State Bar Association, Honolulu, Hawai'i. I spoke to the board about my qualifications to be a judge. I have no notes, transcript, or recording. The address for the Hawai'i State Bar Association is 1100 Alakea Street, Suite 1000, Honolulu, Hawai'i 96813.

October 18, 2016: Speaker, Sacred Hearts Academy Field Trip and Mock Trial, United States District Court, District of Hawaii, Honolulu, Hawai'i. I spoke regarding how I became a federal public defender and my role as defense counsel. I also assisted the students with their mock trial. I have no notes, transcript or recording, but press coverage is supplied. The address for Sacred Hearts Academy is 3253 Waialae Avenue, Honolulu, Hawai'i 96816.

June 24, 2016: Presenter, "How to Get Your Social Media, Email and Text Evidence Admitted and Keep Theirs Out," National Business Institute Seminar, Honolulu, Hawai'i. The presentation discussed ways to authenticate and admit social media, email, and text evidence. I have no notes, transcript, or recording.

The address for the NBI Planning Department is 1218 McCann Drive, Altoona, Wisconsin 54720.

February 20, 2016: Presenter, Federal Public Defender, District of Hawaii (FPD) 2016 Criminal Defense Conference, Honolulu, Hawai'i. I discussed significant appellate cases decided in 2015-2016 and issues involving DNA evidence. I have no notes, transcript, or recording. The address for the FPD is 300 Ala Moana Boulevard, Room 7-104, Honolulu, Hawai'i 96850.

October 18, 2014: Presenter, Federal Public Defender, District of Hawaii (FPD) 2014 Criminal Defense Conference, Honolulu, Hawai'i. My co-presenter, Peter C. Wolff, Jr., Federal Defender, and I discussed significant appellate cases decided in 2013-2014. I have no notes, transcript, or recording. The address for the FPD is 300 Ala Moana Boulevard, Room 7-104, Honolulu, Hawai'i 96850.

July 20, 2013: Presenter, Federal Public Defender, District of Hawaii (FPD) 2013 Criminal Defense Conference, Honolulu, Hawai'i. My co-presenter, Carol Miyashiro, Chief Pretrial Services Officer, and I gave a presentation on detention hearings. I have no notes, transcript, or recording. The address for the FPD is 300 Ala Moana Boulevard, Room 7-104, Honolulu, Hawai'i 96850.

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.

William Cole, *Cuts might jeopardize U.S. public defenders in the isles*, HONOLULU STAR ADVERTISER (July 1, 2013). Copy supplied.

William Cole, *Thousands face 20% less pay*, HONOLULU STAR ADVERTISER (June 23, 2013). Copy supplied.

Nancy Arcayna, *Parents can join action at sports clinics*, HONOLULU, STAR ADVERTISER (Apr. 30, 2013). 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 2021, I have served as a Circuit Court Judge for the First Circuit, State of Hawai'i. Governor David Ige nominated me in September 2021 for a ten-year term and I was confirmed by the state senate in October 2021. I took the oath of office in December 2021. The First Circuit Court is one of four circuit courts in Hawai'i. It is a trial court of general jurisdiction in criminal and civil cases. In December 2021, I was first assigned to the Family Court Criminal Division and in June 2023 I was reassigned to the Circuit Court Criminal Division.

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

I have presided over 21 trials – 17 when I was on the Family Court Criminal Division, and four since I have been on the Circuit Court Criminal Division.

i. Of these cases, approximately what percent were:

jury trials:	100%
bench trials:	0%

ii. Of these cases, approximately what percent were:

civil proceedings:	0%
criminal proceedings:	100%

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

As a Circuit Court Judge for the First Circuit, State of Hawai'i, Criminal Division and Family Court Criminal Division, the vast majority of my decisions are issued from the bench in open court, and recorded verbatim using software called "For The Record" in addition to court clerk minutes. Moreover, all of my written opinions are unpublished. Case files are stored in the State of Hawai'i's case management system. I estimate that I have issued more than a hundred written opinions.

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

1. *State of Hawai'i v. Kameenui, also known as Fuentes*, Case No. 1CPC-22-0001592 (Circuit Court of the First Circuit State of Hawai'i)

The defendant was charged with felony assault in the second degree based on a physical altercation that caused injury to the complaining witness. The complaining witness was the ex-wife of the defendant's son and the altercation occurred in the defendant's home. In June 2023, I presided over case-management related hearings and the jury trial.

After being presented with credible evidence that the defendant acted in self-defense, the jury returned a verdict on June 30, 2023, finding the defendant not guilty.

Counsel for the State:
Chase S. Sakai
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Michelle Muraoka
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

2. *State of Hawai'i v. Palmer*, Case No. 1CPC-19-0000446 (Circuit Court of the First Circuit State of Hawai'i)

The defendant was charged with felony assault in the second degree based on a physical altercation involving the defendant and the complaining witness which occurred outside of a retail store. In June 2023, I presided over case-management related hearings and the jury trial.

After being presented with credible evidence that defendant acted in self-defense, the jury returned a verdict on June 23, 2023, finding the defendant not guilty.

Counsel for the State:
Franklin T. Fegurgur
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Okechukwu K. Amadi
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

3. *State of Hawai'i v. Tanaka*, Case No. 1FFC-22-0000577 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i)

The defendant was charged with a violation of an order for protection based on an allegation that, after the conclusion of a family court proceeding and while exiting the courthouse, the defendant came within 100 feet of the complaining witness, thereby violating the protective order. In 2022 to 2023, I presided over case-management related hearings in this matter.

On September 23, 2022, the defendant filed a motion to dismiss for de minimis

violation and a motion to dismiss based on insufficient evidence and lack of probable cause. On October 5, 2022, I presided over an evidentiary hearing and heard testimony from several witnesses. I determined that the alleged violation was not de minimis and there was probable cause for the charge, and therefore, I denied the motions. Orders supplied.

On May 15, 2023, the defendant pled no contest to the charge and was sentenced to one day imprisonment and one year of probation.

Counsel for the State:
Melody Kaohu
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Teal Takayama
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

4. *State of Hawai'i v. Dicion*, Case No. 1FFC-22-0000164 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i)

The defendant was charged with a violation of an order for protection because, believing he had been given permission by the property owner, the defendant resided in a shed that was located within 100 feet of the complaining witness's residence. In 2022, I presided over case-management related hearings in this matter and the jury trial.

The trial commenced on August 3, 2022; however, the jury was unable to reach a unanimous verdict and a mistrial was declared. On August 24, 2022, the defendant filed a motion to dismiss with prejudice arguing that as a result of the jury's inability to reach a decision, which was 11-to-1 for not guilty, the case should be dismissed pursuant to *State v. Moriwaki*, 65 Haw. 47, 647 P.2d 705 (1982), which held that the trial court has the inherent authority to dismiss an indictment after a mistrial caused by a hung jury. On May 9, 2023, after hearing arguments on the motion, I granted the motion to dismiss and the case was dismissed with prejudice.

Counsel for the State:
Michelle Kim
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Jason A. Iokona Baker (Former Deputy Public Defender)
Department of Corporation Counsel
530 South King Street, Room 110
Honolulu, HI 96813
(808) 768-5014

5. *State of Hawai'i v. Masuda*, Case No. 1FFC-22-0000761 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i)

The defendant was charged with abuse of family or household member based on an allegation that he and the complaining witness, his wife, were involved in a physical altercation. In 2022 to 2023, I presided over case-management related hearings in this matter and the jury trial.

After hearing testimony from the complaining witness and the defendant about how and why the physical altercation occurred and that the defendant acted in self-defense, the jury returned a verdict on March 9, 2023, finding the defendant not guilty.

Counsel for the State:
Mark Shimizu
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Carmel Kwock Esq.
1001 Bishop Street, Suite 580
Honolulu, HI 96813
(808) 291-2141

6. *State of Hawai'i v. Tanaka*, Case No. 1FFC-22-0000465 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i)

The defendant was charged with a violation of an order for protection for allegedly violating the distance requirement of the protection order when he remained in a gym and continued to work out even after learning that the complaining witness was at the same facility. In 2022 to 2023, I presided over case-management related hearings in this matter and the jury trial.

After hearing the testimony from a gym employee, the complaining witness, and the defendant about the facts and circumstances of why the defendant did not leave the gym after the complaining witness arrived, the jury returned a verdict on January 26, 2023, finding the defendant not guilty.

Counsel for the State:
Cherise Braxton-Brooks
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Teal Takayama
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

7. *State of Hawai'i v. Ward*, Case No. 1FFC-22-0000111 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i)

The defendant was charged with a violation of a temporary restraining order based on the allegation that the defendant violated the protection order when he went to the home of the complaining witness to retrieve his personal property. The defendant was accompanied by a third party but not a police escort. In 2022, I presided over case-management related hearings and the jury trial.

After hearing the testimony from the complaining witness, the third-party witness, the police, and the defendant, the jury returned a verdict on December 9, 2022, finding the defendant not guilty.

Counsel for the State:
Joel Garner
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Mark S. Kawata
1221 Kapiolani Boulevard, Suite 808
Honolulu, HI 96814
(808) 591-6488

8. *State of Hawai'i v. Wicks*, Case No. 1CPC-19-0000792 (Circuit Court of the First Circuit State of Hawai'i)

The defendant was charged with the felony offenses of theft in the second degree, identity theft in the second degree, and unauthorized possession of confidential personal information based on the allegation that he used a stolen credit card to purchase items at a store. In 2022, the case was reassigned to me because of court congestion. I presided over case-management related hearings and two jury trials.

I presided over the first trial in this case which began on October 19, 2022. Due to a communication that was received after the jury had commenced deliberations indicating that a juror recognized individuals in a video that had been admitted into evidence, a mistrial was declared.

I presided over the second trial in this case which began on November 9, 2022. During a bench conference that took place out of the presence of the jury, the lapel microphone that the prosecuting attorney was wearing inadvertently transmitted into the courtroom. After conducting individual voir dire of the jury to determine whether the jury heard the prosecutor's comments during the bench trial, a mistrial was declared.

This case is still pending; however, it has been reassigned to the original circuit court judge as the defendant has other cases pending before that judge.

Counsel for the State:
George A. Parrott III
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Doris Lum, Esq.
1001 Bishop Street, Suite 710
Honolulu, HI 96813
(808) 762-7644

9. *State of Hawai'i v. Esperago*, Case No. 1FFC-22-0000472 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i)

The defendant was charged with three counts of violation of an order for protection based on allegations that the defendant violated the distance requirement of the protection order. In 2022, I presided over case-management related hearings.

On September 22, 2022, the defendant filed a motion for severance of charges arguing that the three counts in the complaint should be severed for the purpose of trial because the charged offenses were based on factually separate and distinct conduct that allegedly occurred on three separate occasions, and that if they were tried together, the defendant would be prejudiced. After hearing oral argument, I denied the motion. Order supplied.

As the defendant passed away, this case was dismissed with prejudice.

Counsel for the State:
Michelle Kim

1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Melanie R. Ragamat
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

10. *State of Hawai'i v. Sanders*, Case Nos. 1FFC-22-0000180, 1FFC-22-0000319; and 1FFC-22-0000328 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i)

In 1FFC-22-0000180, the defendant was charged with two counts of violation of a temporary restraining order. In 1FFC-22-0000319 and 1FFC-22-0000328, the defendant was charged with a violation of an order for protection. The allegations were based on the defendant being found three separate times sleeping outside of the residence of the complaining witness, his grandmother, thereby violating the distance requirement of the protection order. In 2022, I presided over case-management related hearings in these matters and three jury trials.

With respect to 1FFC-22-0000180, after hearing the credible testimony of the complaining witness, the jury returned a verdict on July 2, 2022, finding the defendant guilty. On July 26, 2022, I sentenced defendant to 70 days imprisonment and two years of probation.

With respect to 1FFC-22-0000319, after hearing the credible testimony of the complaining witness, the jury returned a verdict on August 18, 2022, finding the defendant guilty. On August 23, 2022, I sentenced defendant to 100 days imprisonment and two years of probation.

With respect to 1FFC-22-0000328, after hearing the credible testimony of the complaining witness, the jury returned a verdict on September 15, 2022, finding the defendant guilty. On September 20, 2022, I sentenced defendant to 126 days imprisonment and two years of probation.

Counsel for the State:
1FFC-22-0000180
Jamie Yamamoto (Former Deputy Prosecuting Attorney)
335 Merchant Street, Room 213
Honolulu, HI 96813
(808) 586-3040

1FFC-22-0000319
Joel Garner

1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

1FFC-22-0000328
Franklin T. Fegurgur
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Alan K. Akao
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

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. *State of Hawai'i v. Badua*, Case No. 1FFC-22-0000153 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i). Copy supplied.

Counsel for the State:
Chad K.L. Au
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Sara Haley
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

Ashlyn Howarth fka Ashlyn Whitbeck (Former Deputy Public Defender)
Colorado State Public Defender
1300 Broadway, Suite 400
Denver, CO 80203
(303) 764-1400

2. *State of Hawai'i v. Dabis*, Case No. 1FFC-21-0000044 and 1FFC-21-0000345 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i). Copy supplied.

Counsel for the State:
Benjamin Rose
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Walter J. Rodby
733 Bishop Street, Suite 2302
Honolulu, HI 96817
(808) 545-5490

3. *State of Hawai'i v. Tanaka*, Case No. 1FFC-22-0000577 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i). Copy previously supplied in response to Question 13c.

Counsel for the State:
Melody Kaohu
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Teal Takayama
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

4. *State of Hawai'i v. Esperago*, Case No. 1FFC-22-0000472 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i). Copy previously supplied in response to Question 13c.

Counsel for the State:
Michelle Kim
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Melanie R. Ragamat
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

5. *State of Hawai'i v. Carriker*, Case No. 1FFC-22-0000128 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i). Copy supplied.

Counsel for the State:
Chad K.L. Au
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Sara Haley
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

6. *State of Hawai'i v. Cichy*, Case No. 1FFC-22-0000169 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i). Copy supplied.

Counsel for the State:
Benjamin Rose
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Alan Akao
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

7. *State of Hawai'i v. Fust*, Case No. 1FFC-22-0000103 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i). Copy supplied.

Counsel for the State:
Chase S. Sakai
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Saisamoa Chee
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

8. *State of Hawai'i v. Haverly*, Case No. 1FFC-22-0000177 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i). Copy supplied.

Counsel for the State:
Jaymie K. Yamamoto
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Alan Akao
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

9. *State of Hawai'i v. Leao*, Case No. 1FFC-22-0000115 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i). Copy supplied.

Counsel for the State:
Chase S. Sakai
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Saisamoa Chee
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

10. *State of Hawai'i v. Mattos*, Case No. 1FFC-22-0000096 (Family Court of the First Circuit Court, Criminal Division, State of Hawai'i). Copy supplied.

Counsel for the State:
Chase S. Sakai
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

Counsel for the Defendant:
Saisamoa Chee
1130 North Nimitz Highway, Suite A-254
Honolulu, HI 96817
(808) 586-2300

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

To the best of my knowledge and based upon a review of my records and publicly available legal databases, I have not had any 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.

To the best of my knowledge and based upon a review of my records and publicly available legal databases, my decisions have never been reversed by a reviewing court, nor have my judgments been affirmed with significant criticism of the 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.

As a Circuit Court Judge for the First Circuit Criminal Division and Family Court Criminal Division, the vast majority of my decisions are issued from the bench in open court, and recorded verbatim using software called "For The Record" in addition to court clerk minutes. Moreover, all of my written opinions are unpublished. Case files are stored in the State of Hawai'i's case management system.

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

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

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

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

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

a. whether your recusal was requested by a motion or other suggestion by a litigant

or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

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

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

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

The Circuit Court of the First Circuit, State of Hawai'i assigns cases to circuit judges randomly and does not employ an automatic recusal system. Instead, recusal is determined on a case-by-case basis, applying the Hawai'i Revised Code of Judicial Conduct. Consistent with the code, I recused myself in the following cases for the following reasons:

State of Hawai'i v. Opunui and Rodriguez, Case No. 1CPC-21-0001345; *State of Hawai'i v. Opunui*, Case No. 1PC161001782; *State of Hawai'i v. Opunui*, Case No. 1PC161001423; and *State of Hawai'i v. Opunui*, Case No. 1CPC-17-0000915. I recused myself *sua sponte* because while employed with the Federal Public Defender, District of Hawai'i, I had represented Opunui in a federal criminal matter. After reviewing the Hawai'i Revised Code of Judicial Conduct, I determined that I should recuse myself from adjudicating Opunui's state cases and returned the case for reassignment.

State of Hawai'i v. Bott; Faletogo; Faletogo; Kahawai; Laban, also known as Laman; and Dabaluz, Case No. 1CPC-21-0001525. I recused myself *sua sponte* because Defendants in the case are alleged to have kidnapped, assaulted and threatened various employees at the Office of Hawaiian Affairs (OHA), which I had represented while in private practice. After reviewing the Hawai'i Revised Code of Judicial Conduct, I determined that I should recuse myself as my impartiality might reasonably be questioned and this issue was incurable. I therefore returned the case for reassignment.

State of Hawai'i v. Burns, Case No. 1CPC-23-0000590. I recused myself *sua sponte* because after reviewing a motion to suppress, I determined that I personally knew one of the witnesses who would be testifying regarding whether a search warrant should have been obtained and my decision on the motion would be based, in part, on the credibility of that individual. After reviewing the Hawai'i Revised Code of Judicial Conduct, I determined that I should recuse myself as my impartiality might reasonably be questioned and this issue was incurable. I therefore returned the case for reassignment.

State of Hawai'i v. Paddock, Case No. 1FFC-22-0000112; *State of Hawai'i v. Paddock*, Case No. 1FFC-22-0000147; and *State of Hawai'i v. Paddock*, Case No. 1FFC-23-0000196. An oral motion to recuse was made on the basis that my judicial staff may be called to testify as to an incident that occurred during a court proceeding. After reviewing the Hawai'i Revised Code of Judicial Conduct, I determined that I should

recuse myself as my impartiality might reasonably be questioned if I had to decide an issue based upon testimony of my judicial staff and this issue was incurable. As the lead judge for the domestic violence division, I directly reassigned the case to another 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.

In 2006, I was appointed by Governor Linda Lingle to serve a four-year term as a Board Member for the Research Corporation of the University of Hawai'i. My term expired in 2010. I have not had any unsuccessful candidacies or nominations for public office.

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

I volunteered to wave signs and canvass the district for John Yoshimura's 1994 Honolulu City Council Campaign.

I volunteered to wave signs for Linda Lingle's 2006 Governor of Hawai'i Campaign.

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

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

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

I served as a law clerk to the Honorable Francis I. Yamashita, Magistrate Judge, United States District Court, District of Hawaii, from 1995 to 1996.

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

I have never practiced alone.

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

of your affiliation with each;

1996 – 1997
Hisaka Stone & Goto
737 Bishop Street
Honolulu, Hawai'i 96813
Associate Attorney

1997 – 2017
Federal Public Defender, District of Hawai'i
300 Ala Moana Boulevard, Room 7-104
Honolulu, Hawai'i 96850
Senior Litigator (2013 – 2017)
Assistant Federal Public Defender (1997 – 2013)

2017 – 2021
McCorriston Miller Mukai MacKinnon LLP
Building 5, 4th Floor, 500 Ala Moana Boulevard
Honolulu, Hawai'i 96813
Partner (2019 – 2021)
Of Counsel (2017 – 2018)

2021
Gallagher Kane Amai & Reyes
745 Fort Street Mall Suite 1550
Honolulu, Hawai'i 96813
Of Counsel

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

I have never served as a mediator or arbitrator.

b. Describe:

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

The nature of my law practice has varied over the years. I began my career as a law clerk for Magistrate Judge Francis I. Yamashita, United States District Court, District of Hawaii. After clerking, I was an associate with the law firm of Hisaka Stone & Goto from 1996 to 1997. My work involved a variety of civil subject matters, including commercial disputes, third-party insurance defense and foreclosure. I drafted pleadings and handled discovery in the civil cases assigned to me, and participated in

settlement conferences and court-mandated arbitrations.

From 1997 to 2017, I was a senior litigator/assistant federal defender at the Federal Public Defender, District of Hawai'i and represented indigent federal criminal defendants charged with felony and misdemeanor offenses. I represented defendants through appeals and argued several cases before the United State Court of Appeals for the Ninth Circuit. I filed and argued numerous motions, sentencing memorandums, and appeals and tried 10 felony jury trials and 10 misdemeanor jury trials to verdict.

In 2017, I returned to private practice and became a partner at the law firm of McCorriston Miller Mukai MacKinnon LLP. I focused on commercial disputes, as well as cases involving contested probate matters, real property disputes, third-party insurance defense, and state/federal criminal defense. I drafted and argued pleadings, handled discovery in the civil cases assigned to me, participated in settlement conferences and mediations and second-chaired a non-jury civil trial and an arbitration to verdict. While in private practice, I was appointed to serve on the Criminal Justice Panel for the United States District Court, District of Hawaii and represented indigent defendants. I also provided pro bono services to a plaintiff in a federal civil case and a petitioner in a state probate matter. From 2017 to 2021, I volunteered as an attorney for Access to Justice Program of the State of Hawai'i Judiciary. The purpose of the program is to substantially increase access to justice in civil legal matters for low- and moderate-income residents of the State of Hawai'i.

In 2021, I became Of Counsel to the law firm of Gallagher Kane Amai & Reyes and continued to focus my practice on commercial disputes, as well as cases involving contested probate matters, real property disputes, third-party insurance defense, and state/federal criminal defense. I drafted and argued pleadings, handled discovery in the civil cases assigned to me and participated in settlements conferences and mediations.

Since December 2021, I have served as a Circuit Court Judge for the First Circuit, State of Hawai'i and was assigned to the Family Court Criminal Division and adjudicated domestic violence cases. While assigned to that division, I served as lead judge from December 2022 to May 2023. In June 2023, I was reassigned to the Criminal Division and adjudicate felony criminal matters.

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

While at the Federal Public Defender, District of Hawai'i my clients were indigent individuals charged with a federal criminal offense.

While in private practice, my clients included individuals and businesses involved in commercial disputes, individuals or estates that had probate issues and individuals charged with federal or state criminal offenses.

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

i. Indicate the percentage of your practice in:

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

ii. Indicate the percentage of your practice in:

1. civil proceedings: 20%
2. criminal proceedings: 80%

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 10 felony federal criminal trials to jury verdict; three as lead counsel, six as co-counsel; and one as stand-by counsel. As sole counsel, I tried 10 federal misdemeanor criminal bench trials. I was also co-counsel for one civil bench trial in state court.

i. What percentage of these trials were:

1. jury: 50%
2. non-jury: 50%

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

I did not practice 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

d. principal counsel for each of the other parties.

1. *The West Molokai Association of Apartment Owners v. Kaluakoi Poolside, LLC*, Case No. 16-0033-A (Dispute Prevention & Resolution Hawai'i, Inc.)

In 2016, the plaintiff sued the defendant to enforce a prior settlement agreement that required the defendant to maintain the common areas of the property the parties shared. As co-counsel for the defendant, I prepared the case for arbitration by drafting pleadings, and conducting written discovery and oral depositions. At the arbitration, I examined witnesses and prepared the closing argument. The arbitration resulted in an order requiring the defendant to maintain the common areas.

Arbitrator:
Judge Joel August (Retired)

Plaintiff's Counsel:
Terrance M. Revere
970 North Kalahea Avenue, Suite A301
Kailua, HI 96734
(808) 791-9550

Co-Counsel for Defendant:
David J. Minkin
500 Ala Moana Boulevard, Building 5, 4th Floor
Honolulu, HI 96813
(808) 529-7400

2. *All Islands Inc. dba Centry 21 All Islands v. Partners E&O Insurance Services, Inc., Tietz, Burns and Wilcox, Ltd., Chartis Specialty Insurance Company*, Civil No. 13-1-0547-02-JPC (First Circuit Court State of Hawai'i)

In 2013, the plaintiff sued its insurer for bad faith after the insurer denied insurance coverage and exposed the plaintiff to a monetary judgment. The plaintiff sought reimbursement for the monetary judgment and punitive damages for the bad faith claim. At the conclusion of the discovery period, I was asked to try the case with co-counsel for Defendant Chartis. In preparing the case for trial, I prepared deposition designations, trial memorandums, and motions in limine. In 2018, a bench trial was held before the Honorable Jeff Crabtree and at the trial, I examined witnesses and prepared the closing

argument brief. Judge Crabtree ruled in favor of the plaintiff. However, after extensive negotiations, the parties settled the litigation.

Judge:
Judge Jeffrey Crabtree

Counsel for Plaintiff:
Alan Van Etten
1003 Bishop Street Suite 1550
Honolulu, HI 96813
(808) 533-1751

Megan Kau
820 Mililani Street
Honolulu, HI 96813
(808) 864-8896

Co-Counsel for Defendants:
Randall Schmitt
500 Ala Moana Boulevard, Building 5, 4th Floor
Honolulu, HI 96816
(808) 529-7300

Peter Olson
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
(808) 521-9200

3. *United States v. Jackson*, Cr. No. 15-00293 SOM-KSC (D. Haw.)

In 2015, I was appointed to represent co-defendant, Jackson, who had been charged with murder that occurred on federal property. Jackson faced a mandatory life sentence, but ultimately received a negotiated sentence of 30 years for her role in the murder based on her willingness to assist prosecutors in obtaining the conviction of her co-defendant. During the time it took to resolve the case, I worked to help Jackson, who suffered from a serious mental health diagnosis, make decisions that were in her best interest and ensured that her mental illness would not impair her ability to be a critical witness for the government. Based upon Jackson's willingness to testify, the co-defendant pled guilty and was sentenced to 35 years of imprisonment.

Judge:
Judge Susan Oki Mollway

Assistant United States Attorneys:
Thomas Brady (Former Assistant United States Attorney)
1060 Richards Street

Honolulu, HI 96813
(808) 768-7400

The Honorable Jill A. Otake (Former Assistant United States Attorney)
300 Ala Moana Boulevard, C-338
Honolulu, HI 96850
(808) 541-1410

4. *United States v. Thornton*, Cr. No. 14-00484 SOM (D. Haw.)

In 2014, the defendant was charged with conspiracy to possess with intent to distribute 50 grams or more of methamphetamine. The defendant faced a mandatory minimum sentence of 10 years and up to life imprisonment. The defendant pled guilty as charged. While the case was pending, the defendant completed a residential substance abuse program, attended college, conducted research for the local university in the area of renewable energy, and published academic articles and conference papers. I prepared an extensive sentencing memorandum that highlighted the incredible achievements the defendant had accomplished since his arrest and argued at sentencing that the defendant was entitled to a lesser sentence. On December 17, 2016, the district court, after reviewing the motion and hearing arguments from counsel, gave a significant downward departure and imposed a sentence of 54 months incarceration and five years' supervised release.

Judge:
Judge Susan Oki Mollway

Assistant United States Attorney:
Chris Thomas
300 Ala Moana Boulevard, Suite 6-100
Honolulu, HI 96850
(808) 541-2850

5. *United States v. Cameron et al.*, Cr. No. 13-1076 JMS, (D. Haw.)

In 2013, the defendants were charged with conspiracy to defraud the government of military housing funds and faced a sentence of imprisonment of up to five years. I was primary defense counsel in the case for co-defendant, Cameron. To prepare the case for trial, I developed and implemented defense strategy that focused on the defendant's lack of knowledge and intent and prepared motions in limine and a trial brief. At trial, I examined witnesses and presented closing argument. After a jury trial, the defendant whom I represented was found not guilty. The co-defendant was found guilty as charged.

Judge:
Judge J. Michael Seabright

Assistant United States Attorney:

Michael Kawahara (retired)

Secondary defense counsel:
Salina Kanai
300 Ala Moana Boulevard, Room 7-104
Honolulu, HI 96850
(808) 541-2521

Co-Defendant counsel:
Gary G. Singh
700 Bishop Street Suite 2000
Honolulu, HI 96813
(808) 529-0626

6. *United States v. Fields*, Cr. No. 08-638 JMS, (D. Haw.)

In 2008, the defendants were charged with conspiracy to possess with intent to distribute 50 grams or more of methamphetamine and faced a mandatory minimum sentence of 10 years and up to life imprisonment. I was secondary defense counsel. Prior to trial, I prepared motions in limine and a trial brief. The defense in this case was challenging because the defendant's limited mental capacity impacted his ability to testify on his behalf given his defense was that he had no knowledge that the co-defendant, his brother, sent a package containing drugs to him. At trial, I presented the opening statement and examined witnesses. The jury found our client not guilty. The co-defendant pled guilty as charged.

Judge:
Judge J. Michael Seabright

Assistant United States Attorney:
Susan Cushman
501 Las Vegas Boulevard South, Suite 1100
Las Vegas, NV 89101
(702) 388-6311

Primary defense counsel:
Alexander Silvert (Former First Assistant Federal Public Defender)
241 Ilihau Street
Kailua, HI 96734
(808) 254-6626

7. *United States v. Dodge*, No. CR-04-00448 DAE (D. Haw.), *vacated and remanded*, 216 F. App'x 712 (9th Cir. 2007)

In 2004, the defendant was charged with interfering with a flight crew. I represented the defendant in his underlying case and subsequent appeal and resentencing. The defendant

pled guilty to the offense. At sentencing, the Government filed a motion for upward departure based on the defendant's prior history and on three victim-related factors. The district court rejected the victim related factors as reasons for upward departure, but adjusted the sentence upwards based on a number of other factors. The court sentenced the defendant to 70 months imprisonment and three years' supervised release. On behalf of the defendant, I briefed and argued his appeal to the Ninth Circuit Court of Appeals arguing the district court improperly upwardly adjusted his sentence. The Ninth Circuit vacated the sentence and remanded. The defendant was subsequently resentenced to 48 months imprisonment and three years' supervised release.

District Court Judge:
Judge David A. Ezra

Circuit Court Judges:
Judges Thomas G. Nelson, Ronald M. Gould, and Consuelo M. Callahan

Assistant United States Attorney:
Marshall H. Silverberg
300 Ala Moana Boulevard, Suite 6-100
Honolulu, HI 96850
(808) 541-2850

8. *United States v. Hubbard*, Cr. No. 03-0561 ACK (D. Haw.)

In 2003, the defendant was charged with attempted murder that occurred on federal property and faced a sentence of up to life. I was primary defense counsel. Prior to trial, I developed and implemented the defense theory that the defendant acted in self-defense and defense of others and prepared motions in limine and a trial brief. During the trial, I presented the opening statement and closing argument, and examined witnesses. The jury found the defendant not guilty.

Judge:
Judge Alan C. Kay

Assistant United States Attorney:
The Honorable Wes R. Porter (Former Assistant United States Attorney)
300 Ala Moana Boulevard C-229
Honolulu, HI 96813
(808) 541-1300

Co-counsel:
Alexander Silvert (Former First Assistant Federal Public Defender)
241 Ilihau Street
Kailua, HI 96734
(808) 254-6626

9. *United States v. Lee*, No. CR-99-00560 SOM (D. Haw.), *rev'd and remanded*, 296 F.3d 792 (9th Cir. 2002)

In 1999, the defendant was indicted for wire fraud, in connection with internet sales using a fraudulent website. I represented the defendant during his underlying case and appeal. The defendant pled guilty to the charge. At sentencing, I filed a memorandum objecting to a sentencing guideline adjustment of two levels for use of a special skill. The district court denied my objection and sentenced the defendant to 5 months imprisonment and 3 years' supervised release. On behalf of the defendant, I briefed and argued his appeal to the Ninth Circuit arguing the district court improperly applied the special skill guideline. The Ninth Circuit reversed, finding the imposition of the special skill adjustment was not supported, and remanded for resentencing. The defendant was then sentenced to no imprisonment and two years of probation.

District Court Judge:
Judge Susan Oki Mollway

Circuit Court Judges:
Judges Melvin T. Brunetti, Andrew Jay Kleinfeld, Sidney R. Thomas

Assistant United States Attorney:
Lawrence L. Tong
300 Ala Moana Boulevard, Suite 6-100
Honolulu, HI 96850
(808) 541-2850

10. *United States v. Miguel*, Cr. No. 98-0393 HG (D. Haw.), *rev'd*, 338 F.3d 995 (9th Cir. 2003)

In 1998, the defendants were charged with felony murder, attempted robbery, attempted burglary, and several firearms charges and faced life in prison. The crimes occurred on federal property. Soon after I started with the Federal Public Defender's Office, I was asked to be secondary defense counsel. The defendant we represented was a juvenile at the time of the offense; however, after extensive litigation, the Government was able to try him as an adult. I assisted lead counsel during the adult transfer hearing by reviewing discovery, developing defense strategy and, because of his age, met with the defendant on a weekly basis. I also assisted in preparing the case for trial by writing motions in limine. At trial, I conducted witness examinations. Initially, the defendant was found guilty on all charges and sentenced to life imprisonment. The defendant appealed. The Ninth Circuit Court of Appeals found that the district court committed structural error when it precluded the defendant from arguing that another individual discharged the firearm that killed the victim and instructed the jury that no evidence supported the defendant's theory. Upon remand, I assisted in negotiating a plea agreement with the Government pursuant to which pled guilty and was sentenced to 25 years incarceration and five years' supervised release.

Judge:
Judge Helen Gillmor

Assistant United States Attorney:
Thomas Brady (Former Assistant United States Attorney)
1060 Richards Street
Honolulu, HI 96813
(808) 768-7400

The Honorable Ronald Johnson (Former Assistant United States Attorney)
777 Punchbowl Street
Honolulu, HI 96813
(808) 539-4173

Primary defense counsel:
Peter C. Wolff, Jr. (Former Federal Public Defender)
1310 Aloha Oe Drive
Kailua, HI 96734
(808) 225-3700

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

The most significant legal activities that I have pursued are my service as Circuit Court Judge from 2021 to the present, and my 20 years as an Assistant Federal Public Defender.

As a Circuit Court Judge, I am responsible for resolving a wide range of disputes concerning felony criminal matters that are assigned to me. My work involves hearing and considering motions, addressing discovery disputes, managing a heavy criminal case docket, writing opinions, and presiding over jury trials. I also accept and adjudicate guilty pleas and impose sentences on defendants who are convicted of felony criminal offenses. When I was assigned to the Family Court Criminal Division, from December 2022 to May 2023, I served as lead judge for that division. While in that division, I adjudicated more than 140 motions to dismiss complaints because the Hawai'i Supreme Court ruled in *State v. Thompson*, 150 Hawai'i 262, 500 P.3d 447 (2021), that the county prosecutor's complaint procedure did not meet statutory requirements, and as such, all cases initiated by complaint were procedurally defective and subject to dismissal. The Supreme Court's decision had a significant impact on my docket. As the county prosecutor could not immediately rectify the issue, hundreds of cases were dismissed without prejudice, subject to refile. To my knowledge those complaints are being refiled.

As an assistant federal public defender for twenty years, I represented hundreds of individuals charged with federal criminal offenses from initial appearance through appeal and strived to provide quality legal representation for those individuals to ensure that our legal system is fair to all. While at the federal public defender office I assisted in training the Criminal Justice Panel attorneys and would present at the seminars on a variety of topics that include appellate, evidentiary, and detention issues.

In addition to my professional experience, I have served my community through various professional and non-profit organizations, such as being a lawyer representative for the United States District Court, District of Hawaii, volunteer attorney for Access to Justice, the Criminal Justice Panel attorney representative for the Kapilipono Program, and have provided pro bono services to a plaintiff in a federal civil case and a petitioner in a state probate matter.

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.

    I co-taught the Appellate Advocacy class at the William S. Richardson School of Law, University of Hawai'i for the spring semesters from 2001 to 2006. The course was designed to develop various lawyering skills, including oral advocacy, legal writing and drafting, and legal research. Students were provided with a hypothetical appellate problem for which they prepared a brief and oral argument. I am unable to locate any syllabi for these courses.

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.

I would recuse from any cases involving former clients. However, perceived conflicts of interest may arise from the length of time that I litigated cases in Hawai'i, my affiliations with several local law firms, organizations, businesses, charitable organizations, clubs, and with my husband's employment and his involvement in the local community. While being on the state bench, this type of conflict is rare. I would resolve any potential conflict on a case-by-case basis, by applying the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other applicable ethical canons, rules, or authority.

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 address any actual or potential conflicts of interest by applying the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other applicable ethical canons, rules, or authority.

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.

Throughout my legal career, I have been committed to serving underprivileged, underrepresented, and disadvantaged people. As an Assistant Federal Public Defender, all of my time was devoted to the disadvantaged. As a practicing attorney I represented individuals on a pro bono basis. For example, in 2021, I provided pro bono services to the plaintiff in *Scutt v. Carbonaro CPAS N MNGMT GRP*, Civil No. 20-00362 JMS-RT, who claimed that his employer discriminated against him based upon his religion and

gender. I assisted the plaintiff with amending his complaint to conform to the rules of federal procedure and I negotiated a settlement in the case. In 2020 to 2021, I also provided pro bono services to an individual who needed assistance in petitioning the probate court to be the legal representative of his deceased sister's estate. From 2017 to 2021, I volunteered as an attorney for Access to Justice Program of the State of Hawai'i Judiciary. The purpose of the program is to substantially increase access to justice in civil legal matters for low- and moderate-income residents of the State of Hawai'i.

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 15, 2023, U.S. Senators Brian Schatz and Mazie K. Hirono announced the formation of a Federal Judicial Selection Commission to make recommendations on candidates to fill potential vacancies on the United States District Court, District of Hawaii.

On March 29, 2023, I submitted my application and was interviewed by the Commission on April 24, 2023. On May 2, 2023, I received notice from the Commission that my application would be forwarded to the Hawai'i senators for consideration. On May 23, 2023, I was interviewed by Senator Schatz, and on May 24, 2023, I was interviewed by Senator Hirono. On June 23, 2023, I learned that my name was forwarded for consideration to the White House. On June 26, 2023, I interviewed with attorneys from the White House Counsel's Office. Since July 1, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 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
Judge Shanlyn Alohakeao Souza Park
Nominee to be a United States District Judge for the District of Hawaii

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. Judges are bound to decide constitutional issues based on the text of the law or Constitutional provision at issue as well as binding precedent. A judge's independent value judgments are irrelevant to the interpretation and application of the law.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's 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 Judge Reinhardt's comment or the context in which he made the comment. If Judge Reinhardt meant that a lower court judge should try to sneak through opinions that might depart from Supreme Court precedent, then I disagree. If confirmed, I would faithfully apply Supreme Court and Ninth Circuit precedent.

3. **Please describe the relevant law governing when a federal court may entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court.**

   Response: Pursuant to 28 U.S.C. § 2254, a federal court shall entertain an application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that (i) the applicant has exhausted the remedies available in the courts of the State, or there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

4. **Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.**

   Response: Pursuant to 28 U.S.C. § 2255, a person in custody under a sentence of federal court may seek relief from the sentence on the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without

jurisdiction to impose such a sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.

5. **Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.**

   Response: In *Students for Fair Admissions, Inc. v. University of North Carolina*, 143 S. Ct. 2141 (2023), Students for Fair Admissions, Inc. ("SFFA") challenged the University of North Carolina's consideration of race as a factor in its admissions process as violative of the Fourteenth Amendment. In *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023), SFFA challenged Harvard College's admissions process, which considered race as one of the factors in its admissions decisions, violating Title VI of the Civil Rights Act of 1964. The Supreme Court held that the consideration of race as one of the factors in the admissions process of the University of North Carolina and Harvard College violates the Equal Protection Clause of the Fourteenth Amendment. *Id.* The Supreme Court explained that "Courts may not license separating students on the basis of race without an exceedingly persuasive justification that is measurable and concrete enough to permit judicial review. The programs at issue here do not satisfy that standard." *Id.*

6. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?**

   Response: Yes.

   If yes, please list each job or role where you participated in hiring decisions.

   Response: I have participated in the hiring decisions for the following positions.

   2021 – present
   22nd Division, First Circuit Court State of Hawaii.
   Law Clerk (2021 – 2023)
   Court Clerk (2023)
   Judicial Assistant (2021)

   I also participated in the hiring and application review process while I was employed at the Office of the Federal Public Defender. Although I did not make the ultimate hiring decisions, I participated in the review of applications and interviews of applicants for various assistant federal defender positions.

7. **Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

Response: No.

8. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

Response: No.

9. **Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

Response: No.

If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

Response: Not applicable.

10. **Under current Supreme Court and Ninth Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?**

Response: Yes. *See Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995).

11. **Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

Response: In that case, the Supreme Court held that the First Amendment prohibits Colorado from forcing a website designer to create expressive designs communicating messages with which the designer disagrees. *303 Creative LLC v. Elenis*, 600 U.S. 570, 143 S. Ct. 2298 (2023)

12. **In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."**

Is this a correct statement of the law?

Response: Yes, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) is binding Supreme Court precedent and was cited in the recent Supreme Court decision, *303 Creative LLC v. Elenis*, 600 U.S. 570, 585, 143 S. Ct. 2298, 2311 (2023).

13. **How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?**

Response: The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U.S. Const., Amdt. 1. A law that regulates speech is "content based if a law applies to a particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). The Supreme Court has supplied the key questions to this analysis. The first step is to determine "whether the law is content neutral on its face," which must be decided "'before turning to the law's justification or purpose.'" *Id.* at 165-166. *Reed* also sets out how courts should evaluate regulations to determine whether they are content-neutral or content-based, with considerations such as whether the law "cannot be justified without reference to the content of the regulated speech, or that were adopted by the government because of disagreement with the message [the speech] conveys." *Id.* at 164 (internal citations omitted). If the court determines the regulation "imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny." *Id.* at 171.

14. **What is the standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: Speech that is a true threat of violence lies outside the bounds of the First Amendment's protection. *See Virginia v. Black*, 538 U.S. 343, 359 (2003); *United States v. Bagdasarian*, 652 F.3d 1113, 1116 (2011). In *Counterman v. Colorado*, 143 S. Ct. 2106, 2113 (2023) the Supreme Court held that in a criminal prosecution, the government "must prove in true-threats cases that the defendant had some understanding of his statements' threatening character," and "that a recklessness standard" of *mens rea* is sufficient.

15. **Under Supreme Court and Ninth Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: In *U.S. Bank National Association ex rel. CWCapital Asset Management. LLC v. Village at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018), the Supreme Court stated that

when making a finding of a "basic" or "historical" fact, a court must address the questions of who did what, when or where, how or why. The distinction between a question of fact and a question of law is not always clear and there is no set "rule or principle that will unerringly distinguish a factual finding from a legal conclusion." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). To distinguish between the two, courts determine whether the question requires "expound[ing] on the law, particularly by amplifying or elaborating on a broad legal standard." *U.S. Bank Nat'l Ass'n*, 138 S. Ct. at 966. If so, it is a legal question. *See id.* If, on the other hand, the question implicates "case-specific factual issues" that require the weighing of evidence and credibility judgments, it is a question of fact. *See id.* This distinction is important because, among other reasons, the characterization of a question as one of fact or law determines the standard of review that applies. *See id.* at 962.

16. **Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: At sentencing, a judge is required to consider all of the sentencing factors enumerated in Section 3553(a)(2) so that the sentence imposed reflects the seriousness of the offense behavior, promotes respect for the law and provides just punishment. The statute also directs a sentencing judge to consider whether the sentence "affords adequate deterrence to criminal conduct" and "protects the public from further crimes of the defendant." The statute does not assign any purpose greater weight than the others. If confirmed, I will follow the factors set forth in Section 3553(a)(2) and the United States Sentencing Guidelines before imposing a sentence.

17. **Please identify a Supreme Court decision from the last 50 years that you think is particularly well reasoned and explain why.**

Response: As a sitting state court judge and a judicial nominee, it is not appropriate for me to comment on the quality of Supreme Court decisions. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

18. **Please identify a Ninth Circuit judicial opinion from the last 50 years that you think is particularly well reasoned and explain why.**

Response: As a sitting state court judge and a judicial nominee, it is not appropriate for me to comment on the quality of Ninth Circuit decisions. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

19. **Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: Title 18 USC § 1507 makes it a crime to engage in picketing or parading without authorization. Specifically, Section 1507 states:

> 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.

20. **Is 18 U.S.C. § 1507 constitutional?**

Response: I am unware of any precedent that discusses the constitutionality of 18 U.S.C. § 1507. However, the Supreme Court has upheld as constitutional a state statute modeled after 18 U.S.C. § 1507. *See Cox v. Louisiana*, 379 U.S. 559, 564 (1965).

21. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

a. **Was *Brown v. Board of Education* correctly decided?**
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?**
l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**
m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response: The Supreme Court cases listed above are binding precedent, with the exception of *Roe v. Wade* and *Planned Parenthood v. Casey,* as those decisions were overruled by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). If confirmed, I will faithfully apply binding Supreme Court and Ninth Circuit precedent. However, as the constitutionality of de jure racial segregation in schools

and interracial marriage are not likely to ever come before the court again, I believe it is permissible as a state court judge and judicial nominee to state my opinion is that *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided.

22. **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 Supreme Court precedent in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), which held that, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 2126. It is then the government's burden to "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* The Supreme Court explained that "courts can use analogies to [] historical regulations" in determining whether modern regulations are constitutionally permissible. *Id.* at 2133. In doing so, the Supreme Court directed lower courts to evaluate "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 (citations omitted). Currently, as a state court judge and if confirmed, I would faithfully apply the legal standard set forth in *Bruen*.

23. **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.

24. **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 the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

       Response: No.

25. **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.

26. **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.

27. **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.

28. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: On March 15, 2023, U.S. Senators Brian Schatz and Mazie K. Hirono announced the formation of a Federal Judicial Selection Commission to make recommendations on candidates to fill potential vacancies on the United States District Court, District of Hawaii.

On March 29, 2023, I submitted my application and was interviewed by the Commission on April 24, 2023. On May 2, 2023, I received notice from the Commission that my application would be forwarded to the Hawai'i senators for consideration. On May 23, 2023, I was interviewed by Senator Schatz, and on May 24, 2023, I was interviewed by Senator Hirono. On June 23, 2023, I learned that my name was forwarded for consideration to the White House. On June 26, 2023, I interviewed with attorneys from the White House Counsel's Office. Since July 1, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2023, the President announced his intent to nominate me.

29. **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.

30. **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.

31. **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.

32. **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.

33. **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.

34. **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?**

Response: No. The decision about which cases to list was entirely my own, as was the substance and description of the cases listed.

a. **If yes,**
   i. **Who?**
   ii. **What advice did they give?**
   iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

Response: Not applicable.

35. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: On June 26, 2023, I interviewed with attorneys from the White House Counsel's Office. Since July 1, 2023, I have been in contact with officials from the Office of Legal Policy ("OLP") at the Department of Justice concerning the background check and vetting process.

36. **Please explain, with particularity, the process whereby you answered these questions.**

Response: After reviewing the questions I received on October 11, 2023, I drafted my responses. I also reviewed guidance provided by the Department of Justice, Office of Legal Policy, which mostly addressed the format for preparing responses but also provided limited feedback on substance. I then finalized and submitted my responses.

Senate Judiciary Committee
Nominations Hearing
October 4, 2023
Questions for the Record
Senator Amy Klobuchar

Shanlyn A.S. Park, nominee to be U.S. District Court Judge for the District of Hawaii

Since 2021, you have served as a judge for the First Circuit in the State of Hawaii. In this capacity, you have presided over 21 criminal jury trials and have issued more than 100 written opinions.

- **How has your experience as a state court judge prepared you to serve as a federal district court judge?**

  Response: I am currently assigned to a felony criminal calendar, and before that, the misdemeanor domestic violence calendar. I am (and was) involved in all aspects of case resolution from pretrial matters (discovery disputes, motions practice) to conducting jury and bench trials, drafting opinions, accepting and adjudicating guilty pleas and sentencing – all of which are also handled by federal district court judges. From these experiences, I have learned how to work effectively with court staff and other agencies involved in the criminal justice system. My experience has also provided key lessons on effective case and courtroom management, including communications with litigants and jurors, the need for concise instructions, rulings and orders. I believe all of these experiences have prepared me to serve as a federal court judge

- **What are some of the most valuable lessons that you learned while serving on the bench?**

  Response: The most valuable lessons that I have learned while serving on the bench are: to treat everyone, from the parties and counsel to court staff to jurors, with respect; to always be prepared; and to make timely, clear and concise rulings. Further, it is important that I maintain a balance between control of the courtroom and the proceedings, and humility about the significant responsibility entrusted to me.

Senator Mike Lee
Questions for the Record
Shanlyn A. S. Park, Nominee to the United States District Court for the District of Hawaii

1. How would you describe your judicial philosophy?

Response: As a state court judge, my philosophy is to approach every case with an open mind; recognize that every case is extremely important for the litigants involved; thoroughly review the record and, research the applicable law; understand the issues raised and listen to the legal arguments; fully and faithfully apply the law in an impartial manner; and provide my rulings timely, clearly and concisely so the parties have a full understanding of my decision.

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

Response: When deciding a case that turned on the interpretation of a federal statute, I would begin with the plain statutory text and any binding precedent of the Supreme Court or the Ninth Circuit. If the plain text is unambiguous then the inquiry ends there. However, if the text is ambiguous and there was no binding precedent, I would consider the canons of construction and interpretive methods as directed by the Supreme Court and Ninth Circuit. If there is no Supreme Court or Ninth Circuit opinions, opinions from other federal courts of appeal may also be reviewed to determine whether those opinions would be persuasive.

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

Response: In the rare instance that I was confronted with a constitutional issue of first impression that had not yet been interpreted by the Supreme Court or the Ninth Circuit, I would first look at the text of the constitutional provision. I would interpret the text in manner consistent with the methods of interpretation that the Supreme Court has used. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court looked to the original public meaning of the Second Amendment and the Sixth Amendment, respectively. If confirmed, I would faithfully apply that interpretative method to the case before me.

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

Response: The Supreme Court has directed lower courts to interpret the Constitution or statutes in accord with the ordinary public meaning of its terms at the time of enactment. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) and *New York State Rifle Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (interpreting the Second Amendment under the original public meaning); *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."); *Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 574 (2002) (applying contemporary community standards when assessing obscenity under the First Amendment). If confirmed, I would faithfully apply that method to the case before me.

5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?

Response: The plain text of the statute is the first and primary source of statutory interpretation. If the plain text is unambiguous the inquiry ends. However, if the text is ambiguous and there is no binding precedent, I would consider the canons of construction and interpretive methods as directed by the Supreme Court and Ninth Circuit. If there is no Supreme Court or Ninth Circuit opinions, opinions from other federal courts of appeal may also be reviewed to determine whether those opinions are persuasive.

6. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: The Supreme Court precedent indicates that you interpret the Constitution or statute in accord with the ordinary public meaning of its terms at the time of enactment. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) and *New York State Rifle Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (interpreting the Second Amendment under the original public meaning); *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."); *Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 574 (2002) (applying contemporary community standards when assessing obscenity under the First Amendment). If confirmed, I would faithfully apply binding precedent when interpreting statutory or constitutional provisions, including any precedent regarding the role of plain meaning in interpreting a particular provision.

7. What are the constitutional requirements for standing?

Response: The Supreme Court has held that Article III standing requires an injury in fact that is: (i) concrete and particularized, not conjectural or hypothetical; (ii) fairly traceable to the defendant's challenged conduct; and (iii) likely redressable by a favorable decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992).

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

Response: Article I, Section 8, Clause 18 of the U.S. Constitution states Congress has the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in

the Government of the United States, or in any Department or Officer thereof." The Supreme Court in *McCulloch v. Maryland*, 17 U.S. 316, 324 (1819) also held that Congress is authorized to pass all laws necessary and proper to carry into execution the powers conferred on it.

9. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: In *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566, 2598 (2012), the Supreme Court held that "questions of constitutionality of action taken by Congress does not depend on recitals of power which it undertakes to exercise."

10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: Yes. In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court established a test to determine whether unenumerated rights are protected by the Constitution and held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and are "implicit in the concept of ordered liberty." *Id.*at 720-21 (internal quotation marks omitted). The Supreme Court has also determined that several unenumerated rights are protected; these include: the right to marry (*Loving v. Virgina*, 388 U.S. 1 (1967)), the right to obtain contraceptives (*Griswold v. Connecticut*, 381 U.S. 479 (1965)), and the right to make decisions about the education and upbringing of one's children (*Meyer v. Nebraska*, 262 U.S. 390 (1923)).

11. What rights are protected under substantive due process?

Response: The Supreme Court has interpreted substantive due process to include, among others, the following fundamental rights: the right to privacy, specifically a right to contraceptives, *Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to marry a person of a different race, *Loving v. Virginia*, 388 U.S. 1 (1967); and the right to marry an individual of the same sex, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, 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 *Lochner v. New York*, 198 U.S. 45 (1905), the Supreme Court held that a New York statute that prescribed maximum working hours for bakers violated the bakers' right to freedom of contract under the Fourteenth Amendment of the Constitution. In 1937, the *Lochner* decision was overturned by the Supreme Court in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), where the Supreme Court

upheld the constitutionality of a state minimum wage legislation and ruled that the state may use its police powers to restrict the individual freedom to contract. As a sitting court judge and a judicial nominee it would be inappropriate for me to comment on an abstract legal issue or a hypothetical dispute that could be the subject of future litigation before me. *See, e.g.*, Code of Conduct for United States Judges, Canon 3(A)(6) and Hawaii Revised Code of Judicial Conduct, Canon 2. As a judge, I am duty-bound to fully and faithfully follow the law, which I have done and will continue to do.

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

Response: In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court held that Congress does not have the power under the Commerce Clause to regulate activity that does not substantially affect interstate commerce. In *Lopez*, the Court identified three categories where Congress may regulate: (i) the channels of commerce, (ii) the instrumentalities of commerce, and (iii) activities that substantially affects interstate commerce. *Id.* at 558-59.

14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has designated race, religion, national origin, and alienage as suspect classes subject to strict scrutiny. *See, e.g., City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). However, this is not an inclusive list. The Supreme Court has described "traditional indicia of suspectness" to include groups that "possess an immutable characteristic determined solely by the accident of birth" or are "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 quotation marks and citations omitted).

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

Response: The Supreme Court has stated that checks and balances and separation of powers plays a vital role in our Constitution's structure. *See Buckley v. Valeo,* 424 U.S. 1, 121 (1976) (*per curiam*). It is a self-executing safeguard against the encroachment or aggrandizement of one branch of government at the expense of the other. *See Morrison v. Olson*, 487 U.S. 654, 693 (1988).

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: As a sitting state court judge, I apply binding precedent and would continue to do so if confirmed. I would decide this case as I would decide all cases

that come before me -- consider the legal arguments of the parties, research binding precedent for guidance, including how to decide a case in which one branch assumed an authority not granted to it by the text of the Constitution. The Supreme Court has previously decided cases in which a branch exceeded its constitutional authority, such as *Marbury v. Madison*, 5 U.S. 137 (1803) (Congress); and *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (President).

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

Response: As a sitting state court judge, I must decide cases based upon the facts and the applicable law. Empathy plays no role in a judge's determination of a case.

18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Neither is appropriate and both are contrary to law.

19. 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 trends discussed in this question and do not have an opinion on this issue. Currently, as a sitting state court judge, I am required to faithfully apply binding Supreme Court.

20. 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." Black's Law Dictionary (11th ed. 2019). "Judicial supremacy" is defined as "[t]he doctrine 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." *Id.*

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: As a sitting judge and judicial nominee, it is inappropriate for me to comment on how elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions. The Supreme Court has held that elected officials must follow duly rendered judicial decisions. *See, e.g., Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."). Moreover, Article VI of the Constitution requires all elected officials to swear an oath to support the Constitution.

22. **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 state court judge, I must decide the cases and controversies that are brought before me and apply the law in an impartial and fair manner. A judge's role is to not make or execute laws. I understand the limited role of the judiciary and fully and faithfully apply the law to the limited issues properly before me in an impartial manner in every case.

23. **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: Stare decisis requires a district court judge to follow binding court precedent regardless of whether the Constitutional underpinnings of that precedent are "questionable." It is not the province of a lower court judge to extend or limit precedent; rather, it the province and duty of a lower court judge to follow that precedent. Respect for precedent gives the law consistency and makes interpretations of the law more predictable.

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

Response: An individual defendant's race, gender, nationality, sexual orientation or gender identity do not play a role in a judge's sentencing analysis pursuant to 18 USC § 3533. Additionally, in 28 USC § 994 (d)(11), Congress specifically prohibited the

United States Sentencing Commission from basing any guidelines or policy statements based on race, sex, national origin, creed, and socioeconomic status of offenders.

25. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not familiar with the statement in question. According to Black's Law Dictionary, "equity" is defined as "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019).

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

Response: I am not aware of any Supreme Court or Ninth Circuit precedent that explains the difference between "equity" and "equality." As stated in my response to Question 25, Black's Law Dictionary, "equity" is defined as "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019). "Equality" is defined as "[t]he quality, state, or condition of being equal; esp., likeness in power or political status." *Id.*

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

Response: The Fourteenth Amendment's Equal Protection Clause provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. I am not aware of any Supreme Court or Ninth Circuit binding authority that addresses whether "equity" is guaranteed under the Fourteenth Amendment's Equal Protection Clause.

28. How do you define "systemic racism?"

Response: I am not aware of any Supreme Court or Ninth Circuit precedent that defines "systemic racism." Black's Law Dictionary defines "racism" as, inter alia, "[t]he assumption of lower intelligence and importance given to a person because of their racial characteristics." Black's Law Dictionary (11th ed. 2019).

29. How do you define "critical race theory?"

Response: I am not aware of any Supreme Court or Ninth Circuit precedent that defines "critical race theory." Black's Law Dictionary defines "critical race theory"

as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." Black's Law Dictionary (11th ed. 2019).

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

Response: Please see responses to Questions 28 and 29.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Shanlyn Alohakeao Souza Park, nominated to be United States District Judge for the District of Hawaii

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 Fourteenth Amendment and federal statutes prohibit discrimination on the basis of race.

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 state court judge and as a judicial nominee, it is not appropriate for me to comment on matters that could come before me as it may be viewed as prejudging a matter. *See* Code of Conduct for United States Judges, Canon 3(A) and Hawaii Revised Code of Judicial Conduct, Canon 2. However, the Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702 (1997), held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and are "implicit in the concept of ordered liberty." *Id.*at 720-21 (internal quotation marks omitted). If confirmed, I would faithfully apply the *Glucksberg* test and binding Supreme Court and Ninth Circuit precedent to a case involving unremunerated rights 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: As a state court judge, my philosophy is to approach every case with an open mind; recognize that every case is extremely important for the litigants involved; thoroughly review the record, research the applicable law, understand the issues raised and listen to the legal arguments, and fully and faithfully apply the law in an impartial manner and provide my rulings in a clear manner so that the parties understand my decision. I have not studied the judicial philosophies of Justices Warren, Burger, Rehnquist and Roberts to determine which Justice's philosophy is most analogous.

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 "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted" and, more specifically, as "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." I do not characterize myself with any labels.

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 "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." 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). I do not characterize myself with any labels.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: If presented with a constitutional issue of first impression that had not yet been interpreted by the Supreme Court or the Ninth Circuit, I would first look at the text of the constitutional provision. I would interpret the text in manner consistent with the methods of interpretation that the Supreme Court has used. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *Crawford v. Washington,* 541 U.S. 36 (2004), the Supreme Court looked to the original public meaning of the Second Amendment and the Sixth Amendment, respectively. If confirmed, I would faithfully apply that interpretative method to 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: Supreme Court precedent instructs that you interpret the Constitution or statute in accord with the ordinary public meaning of its terms at the time of enactment. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) and *New York State Rifle Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (interpreting the Second Amendment under the original public meaning); *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."); *Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 574 (2002) (applying contemporary community standards when assessing obscenity under the First Amendment). If confirmed, I would faithfully apply that method to the case before me.

8. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: Absent amendment, the Constitution does not change, rather it endures as society changes.

9. **Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?**

Response: Yes, it is binding precedent.

a. **Was it correctly decided?**

Response: As a state court judge and a judicial nominee, it is not appropriate for me to comment on whether a Supreme Court case was correctly decided, as there will likely be litigated matters arising from the decision that could possibly come before me as a judge. If confirmed, I will faithfully apply binding Supreme Court and Ninth Circuit precedent, including *Dobbs*.

10. **Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: Yes, it is binding precedent.

a. **Was it correctly decided?**

Response: As a state court judge and a judicial nominee, it is not appropriate for me to comment on whether a Supreme Court case was correctly decided, as there will likely be litigated matters arising from the decision that could possibly come before me as a judge. If confirmed, I will faithfully apply binding Supreme Court and Ninth Circuit precedent, including *Bruen*.

11. **Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?**

Response: Yes, it is binding precedent.

a. **Was it correctly decided?**

Response: Yes. The constitutionality of racial segregation in schools is not likely to ever come before the court again, so I believe it is permissible as a state court judge and judicial nominee to state my opinion that this case was correctly decided.

12. **Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?**

Response: Yes, it is binding precedent.

a. **Was it correctly decided?**

Response: As a state court judge and a judicial nominee, it is not appropriate for me to comment on whether a Supreme Court case was correctly decided, as there will likely be litigated matters arising from the decision that could possibly come before me as a judge. If confirmed, I will faithfully apply binding Supreme Court and Ninth Circuit precedent, including *Students for Fair Admissions*.

13. **Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: Yes, it is binding precedent.

a. **Was it correctly decided?**

Response: As a state court judge and a judicial nominee, it is not appropriate for me to comment on whether a Supreme Court case was correctly decided, as there will likely be litigated matters arising from the decision that could possibly come before me as a judge. If confirmed, I will faithfully apply binding Supreme Court and Ninth Circuit precedent, including *Gibbons*.

14. **What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: 18 U.S.C. § 3142(e) states the types of offenses that trigger a presumption in favor of pretrial detention and includes offense that have a statutory maximum term of imprisonment of ten years or more, certain firearm offenses, certain offenses involving minor victims, offenses that involve slavery and human trafficking, and federal criminal terrorism.

a. **What are the policy rationales underlying such a presumption?**

Response: The statute does not provide any policy rationales underlying the presumption and I am not aware of any Supreme Court or Ninth Circuit cases that explain the policy rationale.

15. **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. In *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), the Supreme Court held that a state may not compel a small business operated by an observant owner to create expressive speech that would violate the owner's sincerely held religious belief.

16. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: The Free Exercise Clause of the First Amendment bars government departure from neutrality on matters of religion. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n,* 138 S. Ct. 1719 (2018). In *Masterpiece Cakeshop,* the Supreme Court reaffirmed that states have a duty "not to base laws or regulations on hostility to a religion or religious viewpoint." *Id.* at 1731. Any time a law or regulation "treat[s] any comparable secular activity more favorably than religious exercise," strict scrutiny is

triggered. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (*per curiam*). To satisfy strict scrutiny, the state must carry its burden of showing that the challenged law or regulation "furthers 'interests of the highest order' by means 'narrowly tailored in pursuit of those interests.'" *Id.* at 1298 (citation omitted).

17. **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*, 141 S. Ct. 63 (2020), New York Gov. Andrew Cuomo was enjoined from enforcing an executive order relating to religious services during the COVID-19 pandemic. In a *per curiam* opinion, the Supreme Court held that the applicants were entitled to a preliminary injunction pending appeal because (i) they showed they were likely to prevail on their First Amendment free exercise claims, given that secular businesses were not subject to the same restrictions (*id.* at 66); (ii) the loss of First Amendment freedom constitutes an irreparable injury (*id.* at 67); and (iii) the government had not shown the relief would harm the public as it did not claim attendance at the applicants' worship services had resulted in the spread of disease. *See id.* at 68.

18. **Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom.***

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court granted injunctive relief against a California regulation that had the effect of restricting at-home Bible studies and prayer meetings by limiting all gatherings in private homes to no more than three households at a time. In a *per curiam* opinion, the Supreme Court held that California's regulation on private gatherings was not facially neutral because it treated comparable secular activity more favorably than religious activity and therefore triggered strict scrutiny under the Free Exercise clause. *Id.* at 1296. The Court noted that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* The Court also concluded that even if the government withdraws or modifies a restriction during the course of litigation, it does not moot the case if the plaintiffs remain under a constant threat the government will reinstate the restriction. *Id.* at 1297.

19. **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 School Dist.*, 142 S. Ct. 2407 (2022).

20. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.***

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the shop and its owner sought review of the Colorado Civil Rights Commission's decision and issuance of a cease and desist order, in a proceeding arising from the shop's refusal to sell a wedding cake to a same-sex couple, requiring the shop and owner not to violate the Colorado Anti–Discrimination Act by discriminating against potential customers because of their sexual orientation. The Supreme Court held that the Commission did not comply with the Free Exercise Clause's requirement of religious neutrality.

21. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: Yes. In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014), the Supreme Court stated that so long as religious beliefs are sincere, they are protected, even if they are not based on teachings 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?**

Response: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014), the Supreme Court held that the "Court's 'narrow function . . . is to determine' whether the plaintiffs' asserted religious belief reflects 'an honest conviction.'" *Id.* at 725 (quoting *Thomas v. Review Bd. of Ind. Employ. Sec. Div.*, 450 U.S. 707, 716 (1981)).

b. **Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: See response to Question 21a.

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: I do not know the official position of the Catholic Church on whether abortion is acceptable and morally righteous.

22. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that the "ministerial exception," grounded in the First Amendment's Religion Clauses, barred the teachers' employment discrimination claims. *Id.* at 2060. Religious institutions do not enjoy a general immunity from secular laws, but the First Amendment does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission. *Id.*

23. **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, Pa.*, 141 S. Ct. 1868 (2021), the Supreme Court held that the refusal of Philadelphia to contract with Catholic Social Services ("CSS") for the provision of foster care services unless CSS agreed to certify same-sex couples as foster parents violates the Free Exercise Clause of the First Amendment.

24. **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 as next friend of O. C. v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court held that Maine's "nonsectarian" requirement for its otherwise generally available tuition assistance payments violated the First Amendment's Free Exercise Clause.

25. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that Bremerton School District's discipline of high school football coach Joseph Kennedy for praying after football games violated Kennedy's rights to free exercise and free speech under the First Amendment.

26. **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 Justice Gorsuch's concurrence in *Mast v. Fillmore County, Minnesota* 141 S. Ct. 2430 (2021), he wrote that the lower courts misapplied the Religious Land Use and Institutionalized Persons Act because the statute requires the application of "strict scrutiny." *See* 42 U.S.C. § 2000cc(a)(1). Justice Gorsuch's concurrence emphasized that the strict scrutiny analysis must be "precise," and the exemptions afforded other groups should be carefully considered. *Mast*, 141 S. Ct. at 2432. Justice

Gorsuch stressed that "neither the Amish nor anyone else should have to choose between their farms or their faith." *Id.* at 2434.

27. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: As a sitting court judge and judicial nominee, I am generally precluded from expressing an opinion regarding an issue that could come before me. *See* Code of Conduct for United States Judges, Canon 3(A) and Hawaii Revised Code of Judicial Conduct, Canon 2. If I am confirmed, I would fully and faithfully apply any binding Supreme Court and Ninth Circuit precedent to any such issue that is properly raised in a case pending before me.

28. **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.

29. **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.

30. **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.

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

Response: While political appointments are the prerogative of the person vested with the authority to make the appointment, such appointments are still subject to the Constitution and relevant statutes. As a sitting court judge and judicial nominee, I am generally precluded from expressing an opinion regarding an issue that could come before me. *See* Code of Conduct for United States Judges, Canon 3(A) and Hawaii Revised Code of Judicial Conduct, Canon 2. If I am confirmed, I would faithfully apply any binding Supreme Court and Ninth Circuit precedent to any such issue that is properly raised in a case pending before me.

32. **If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?**

Response: In *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 539 (2015), the Supreme Court held that disparate impact claims are cognizable under certain federal anti-discrimination laws. However, I am not aware of any Supreme Court or Ninth Circuit precedent that address subconscious racial discrimination. If I am confirmed, I would faithfully apply any binding Supreme Court and Ninth Circuit precedent to any such issue that is properly raised in a case pending before me.

33. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: The number of justices on the U.S. Supreme Court is a question for policymakers. If confirmed, I will be bound by Supreme Court precedent regardless of the number of justices on the Court.

34. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response. No.

35. **What do you understand to be the original public meaning of the Second Amendment?**

Response: The Supreme Court has held that the Second Amendment protects an individual's right to bear arms for self-defense, both in one's home and in public. *See District of Columbia v. Heller*, 554 U.S. 50 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

36. **What kinds of restrictions on the Right to Bear Arms do you understand to be**

prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?

Response: In *District of Columbia v. Heller*, 554 U. S. 570 (2008), and *McDonald v. Chicago*, 561 U. S. 742 (2010), the Supreme Court held that the Second and Fourteenth Amendments protect an individual's right to keep and bear arms for self-defense. Under *Heller*, when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct, and to justify a firearm regulation the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation. In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, 2126 (2022), the Supreme Court explained "that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. *Id.* Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. *Id.* Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.*

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

Response: Yes. *See District of Columbia v. Heller*, 554 U.S. 570, 602 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010); *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111, 2156 (2022).

38. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: No. *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

39. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: No. *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: Pursuant to Article II of the Constitution, the President is vested with executive power to faithfully enforce laws. The Supreme Court has recognized that the executive branch retains broad discretion with respect to enforcement decisions. *See Wayte v. United States*, 470 U.S. 598, 607 (1985). As a sitting state court judge and judicial nominee, I am generally precluded from expressing an opinion regarding an issue that could come before me. *See* Code of Conduct for United States Judges, Canon 3(A) and Hawaii Revised Code of Judicial Conduct, Canon 2. If I am confirmed, I

would faithfully apply any binding Supreme Court and Ninth Circuit precedent to any such issue that is properly raised in a case pending before me.

41. **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 both terms. Prosecutorial discretion is defined 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). Administrative rule" is defined as "[a]n officially promulgated agency regulation that has the force of law[,]" and defines administrative "rulemaking" as "[t]he process used by an administrative agency to formulate, amend, or repeal a rule or regulation." *Id.*

42. **Does the President have the authority to abolish the death penalty?**

Response: No. The Federal Death Penalty Act is codified in 18 U.S.C. § 3591. The President does not have the authority to unilaterally amend the criminal code.

43. **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*, 141 S. Ct. 2485 (2021), the Supreme Court vacated the nationwide moratorium of evictions that had been promulgated by the Centers for Disease Control ("CDC") during the pandemic. The Court concluded the petitioners were likely to succeed on the merits of their claim, that the CDC did not have authority under the statute, and the court would expect "Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Id.* at 2489.

44. **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 state court judge and judicial nominee, it would not be proper for me to comment on the actions or conduct of prosecutors.

45. **How many written opinions have you issued as a judge?**

Response: I have written over 150 opinions.

46. **How many written opinions have you authored on federal or state constitutional matters?**

Response: None.

47. **During your testimony before the Hawaii Senate Judiciary Committee hearing, you mentioned that sentencing factors can allow a judge to consider concerns with respect to implicit bias.**

a. **Do you believe implicit bias exists?**

Response: Yes, as I understand implicit bias, I believe that all human beings, including me, have implicit biases that operate below the level of conscious awareness.

b. **Should judges consider any alleged implicit bias when sentencing?**

Response: Given the critical importance of exercising fairness and equality in the court system, a judge should be particularly concerned that they do not impose a sentence that is biased in any manner. A defendant's race, gender, nationality, sexual orientation, or gender identity do not play a role in a judge's sentencing analysis pursuant to 18 USC § 3533. Additionally, in 28 USC § 994 (d)(11), Congress specifically prohibited the United States Sentencing Commission from basing any guidelines or policy statements based on race, sex, national origin, creed, and socioeconomic status of offenders.

c. **Please list all the instances where you considered implicit bias when (1) sentencing a defendant, (2) determining probable cause, (3) assessing a motion to suppress, or (4) resolving family court matters.**

Response: In all of my sentencing hearings, I try to be aware of any bias that I may have so that I can set those biases aside and fairly and impartially apply the sentencing factors. I am required to impose a sentence that reflects the seriousness of the offense, promotes respect for the law, provides just punishment, affords adequate deterrence, protects the public from further crimes by the defendant and to provides the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner. To do so, I look at the nature and circumstances of the offense and the history and characteristics of a defendant. I also am required to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct as well as determine restitution to the victims. I have applied these factors in all of my sentencing hearings and have not taken into account the defendant's race, gender, nationality, sexual orientation or gender identity. Similarly, with respect to determinations of probable cause, assessing motions to suppress and resolving family court matters, I have fairly and impartially applied the law to the facts of the case without consideration to an individual defendant's race, gender, nationality, sexual orientation or gender identity.

Questions from Senator Thom Tillis
for Shanlyn Alohakeao Souza Park, nominee to the U.S. District Court for the District of Hawaii

1. **Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

   Response: A judge's personal views are irrelevant in interpreting and applying the law.

2. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: I believe impartiality is an expectation and required under Canon 3 of the Code of Conduct for United States Judges.

3. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 20019). I do not consider judicial activism to be appropriate.

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: As a state circuit court judge, my role is to faithfully apply the law to the facts of the case before me without regard to anyone's desired outcome.

6. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: The Second Amendment is a fundamental right. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022). If I am confirmed, I will continue to do what I have sought to do as a state court judge, which is to faithfully apply the precedent regarding the Second Amendment fairly and impartially to the matter before me.

7. 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: While serving as a state court judge I have not considered any cases regarding qualified immunity. If I am confirmed, and subsequently presented with a case involving a qualified immunity defense, I would adhere to the binding precedent of the Supreme Court and Ninth Circuit on qualified immunity. *See, e.g. Pearson v. Callahan*, 555 U.S. 223 (2009) and *Hopson v. Alexander*, 71 F.4th 692, 697 (9th Cir. 2023). "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Taylor v. Barkes*, 575 U.S. 822, 825 (2015) (internal quotation marks and citation omitted); *see also Mueller v. Auker*, 576 F.3d 979, 992 (9th Cir. 2009) ("Under qualified immunity, an officer will be protected from suit when he or she "makes a decision that, even if constitutionally deficient, reasonably misapprehends the law governing the circumstances.") (internal quotation marks and citation omitted).

8. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: As a state court judge and as a judicial nominee, it is not appropriate for me to opine on the Supreme Court's or Ninth Circuit's qualified immunity jurisprudence. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

9. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: As a state court judge and as a judicial nominee, it is not appropriate for me to opine on the Supreme Court's or Ninth Circuit's qualified immunity jurisprudence. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

10. What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?

Response: The Intellectual Property Clause found in Article 1 of the Constitution empowers Congress to grant authors and inventors exclusive rights in their writings and discoveries. U.S. Const. art. I, § 8; *see also Golan v. Holder*, 565 U.S. 302, 325 (2012) ("the Clause 'empowers Congress to determine the intellectual property regimes that, overall, in that body's judgment, will serve the ends of the Clause.'") (internal citations omitted). As a state court judge and a judicial nominee, it is not appropriate for me to opine on this issue as the issue of intellectual property rights and enforcement is being actively litigated in the courts. If confirmed, I would faithfully apply binding legal precedent from the Supreme Court, Ninth Circuit and Federal Circuit on intellectual property issues that would come before me.

11. In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"

Response: The Supreme Court in *Alt. Marine Const. Co v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 65 (2013) stated that "forum shopping" is disfavored and could undermine the public confidence in the judicial system. I believe forum shopping and/or judge shopping undermines the trust and confidence in the judicial system. In the United States Court, District of Hawaii, for which I am nominated, civil cases are assigned by a random draw. *See* Local Rules of Practice for the United States District Court for the District of Hawaii 40.1.

12. 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 shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?

Response: As a state court judge and judicial nominee, it is not appropriate for me to opine on the Supreme Court's patent eligibility jurisprudence. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

FEDERAL PUBLIC DEFENDER DISTRICT OF HAWAIʻI

Prince Jonah Kūhiō Kalaniana'ole Federal Building
300 Ala Moana Boulevard | Suite 7-104
Honolulu, Hawai'i | 96850-5269
Phone: (808) 541-2521
Toll Free: (877) 541-2521
Facsimile: (808) 541-3545
Website: https://hi.fd.org

Salina M. Kanai
Federal Public Defender
Salina_Kanai@fd.org

September 24, 2023

Via email

The Honorable Richard J. Durbin
Chairman, Senate Judiciary Committee
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey O. Graham
Ranking Member, Senate Judiciary Committee
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Judge Shanlyn A.S. Park
Judicial Nominee for U.S. District Judge, District of Hawaii

Dear Chairman Durbin and Ranking Member Graham:

The Honorable Shanlyn A.S. Park has been nominated to be a U.S. District Judge in the District of Hawaii, and this letter lays out reasons why I wholeheartedly support her nomination. Please note that the opinion expressed is my own, in the capacity in which I have known Judge Park as a former colleague in this office.

As someone who has practiced in federal court almost exclusively for 14 years, I am keenly aware of the qualities that make an excellent federal judge, and Judge Park possesses these qualities.

I was lucky enough to work alongside Judge Park (of course, Shanlyn, then) from 2009 to 2017. I was a brand-new federal practitioner, and Shanlyn had been at the office for many years. She took me under her professional wing and became my unofficial mentor for the time I was in the office and beyond. Several things about her as an attorney were striking and, I believe, speak to

pertinent qualities that make a sound federal judge. I say this having done several jury trials with her, not to mention working daily with her for nearly eight years.

Integrity and Honesty: Shanlyn possesses integrity in spades. Reputation for honesty is almost everything in a small legal community. While she fought hard for her clients, being honest and forthcoming in her dealings with the Court, with prosecutors and with her clients, was of utmost importance to her. Judges and attorneys on the other side of the aisle respected her and were able to get along with her. This is not necessarily an easy thing to do in adversarial situations, but Shanlyn handled her practice, including working with the opposing side, with the utmost integrity.

Patience and Even-Temperament: In criminal defense work, particularly with indigent clients, it is easy to get frustrated and to lose patience. It is easy to become jaded and lazy. Shanlyn treated each case, each client and each issue that was assigned to her like it was the most important thing on her busy caseload – because it was. I have seen her in Court in high-pressure situations, under attack, and she has never lost her cool. I have seen her deal with extremely antagonistic attorneys, clients and witnesses, and she has always been professional while not bowing to pressure.

Humility and Sound Judgment: It is important for a judge to have some level of humility, and Shanlyn has that quality. She does not pretend to know everything, despite a rich career in both criminal and civil practice, as well as sitting as a judge. But she is unafraid of acknowledging that she does not have the answer, she works incredibly hard to gain knowledge to get to the right answer, and she is open to noting when she has made mistakes. It is critical that judges try and get things right without regard to their ego, and I have no doubt that Shanlyn does this as a state court judge.

Fairness: In this line of work, we often have extraordinarily difficult conversations with clients who can be cognitively impaired, mentally ill or otherwise very difficult to communicate with. While we are our clients' sole advocates in court, it is also our job to be clear-eyed about both sides of a case, so that we can advise our clients realistically. Shanlyn comes from a family of law enforcement, which I think helped her to be able to evaluate both sides of a case. I have no doubt that this skill was part of what made her a formidable trial attorney, particularly when it came to preparing for trial.

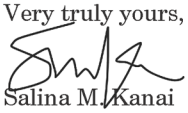
I can only directly speak to Shanlyn's skills when she and I were colleagues (and I should note that she was promoted to be our office's Senior Litigator while we were line attorneys, a testament to her skills), but I have reason to believe that as a Circuit Court Judge in state court, she exercises

these same qualities. Honolulu is a small town for lawyers and reputation counts for a lot. The reputation of Judge Park on the bench is consistent with my dealings with her as a colleague.

Shanlyn grew up in Hawaii, was educated here, both for undergraduate and law school, and has enriched our community. I cannot keep track of the different causes and boards she has committed to over the years, because she truly wants to make our state a better place overall, not just in the legal community. That she has been able to do all this while also raising two children is astonishing.

The diversity, breadth of experience, and commitment to the rule of law that Judge Park would bring to our bench would truly be an invaluable addition to the District of Hawaii and its citizens.

Very truly yours,



Salina M. Kanai
Federal Public Defender
District of Hawaii

National Congress of American Indians

NARF

National Native American Bar Association

September 25, 2023

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Hart Senate Office Building, SH 711
Washington, DC 20510

Senator Lindsay Graham, Ranking Member
Senate Committee on the Judiciary
Russell Senate Office Building, SR 211
Washington, DC 20510

RE: Support for Shanlyn Park for U.S. District Court for the District of Hawai'i

Dear Chairman Durbin and Ranking Member Graham:

The National Congress of American Indians (NCAI), the Native American Rights Fund (NARF), and the National Native American Bar Association (NNABA) write in support of Judge Shanlyn Park for one of the judicial vacancies on the U.S. District Court for the District of Hawai'i.

The increased representation of Native Americans, including American Indians, Alaska Natives, and Native Hawaiians, in the federal judiciary is a shared priority of NCAI, NARF, and NNABA. Our organizations collectively represent a substantial constituency of Native American Tribal Nations, Native communities, legal professionals, and citizenry that is particularly representative of those impacted by judicial appointments. NCAI is the oldest, largest, and most representative Native American and Alaska Native tribal organization in the country, serving the broad interests of tribal governments and communities. For more than 50 years, NARF has been the leading non-profit law firm representing the interests of Native American, Native Hawaiian, and Alaska Native governments, individuals, and organizations throughout the United States who otherwise might have gone without adequate representation. NNABA is an organization whose members include Native American, Alaska Native, and Native Hawaiian attorneys, Indian law practitioners and professors, as well as tribal court judges and advocates. Cases involving Native Americans and their legal issues traditionally have been heard primarily in federal courts, and it is imperative that federal court judges are well-versed in the political status, legal principles, and human rights of Tribal Nations and Native individuals.

Judge Park is highly qualified for a federal judgeship. She is an experienced judge and before her appointment to the state court where she currently serves, she was an exceptionally accomplished litigator with experience litigating in state and federal courts, on complex criminal and civil matters, in private practice and in public service as a federal prosecutor. Judge Park has a demonstrated exceptional commitment to volunteerism and community service, reflecting her strong ties to Hawai'i and her devotion to the state where she was born, raised, educated, raised, and has worked throughout her career.

Judge Park's background as a Native Hawaiian and her deep ties to Native communities in Hawai'i merit strong consideration. Many issues of daily life for people in Native communities, including Native Hawaiians, are controlled by federal statutes and federal common law. Despite the impact of federal court decisions on Native communities, they have been historically under-represented in the federal judiciary. Currently, of the more than 870 authorized federal judgeships, only six serve on the federal bench from American Indian, Alaska Native, and Native Hawaiian communities. If the federal judiciary reflected nationwide demographics, there would be more than 14 Native judges serving as federal judges. If appointed and confirmed, Judge Park would be the first Native woman, and the first Native Hawaiian woman, federal judge in Hawai'i. This is especially important because Native Hawaiians are the indigenous people of all the lands making up this district, and the Native Hawaiian community comprises 20% of the population served by the district. We believe that Judge Park's knowledge and experience are vitally important for the federal judiciary, particularly in a location like the District of Hawai'i.

NCAI, NARF, and NNABA are proud to support Judge Park. We hope that the United States Senate will move swiftly to confirm this excellent and historic nominee. Should you have any questions or wish to discuss this further, please do not hesitate to contact us as well as NCAI Legal and Policy Director Ryan Seelau, rseelau@ncai.org and NARF Staff Attorney Morgan Saunders, msaunders@narf.org.

Sincerely,

Larry Wright, Jr., Executive Director
National Congress of American Indians

John E. Echohawk, Executive Director
Native American Rights Fund

Makalika Naholowaa, President
National Native American Bar Association

cc:

The Honorable Mazie K. Hirono
United States Senate
Hart Senate Office Building, SH-109
Washington, DC 20510

The Honorable Brian Schatz
United States Senate
Hart Senate Office Building, SH-722
Washington, DC 20510

Florence T. Nakakuni

246 Halemaumau Street, Honolulu, Hawaii 96821
(808) 373-6906

September 22, 2023

The Honorable Richard Durbin
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey O. Graham
Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham:

I am writing to express my strong support for the nomination of State of Hawaii Circuit Court Judge Shanlyn Park to the United States District Court for the District of Hawaii.

I have known Judge Park for approximately 28 years. Judge Park's personal integrity, character and humility along with her strong litigation background as a State Court Judge, an Assistant Public Defender and having been a partner in private practice in Honolulu, make her, in my opinion, a highly qualified jurist for the federal bench. I have known her from around 1995—I was an Assistant U.S. Attorney in the U.S. Attorney's Office here in Hawaii and Judge Park [then, Shanlyn Souza] was a law clerk to U.S. Magistrate Judge Francis Yamashita. After her one-year clerkship, she moved on the Federal Public Defender's Office where she served for almost 20 years. Over the years, I have had many cases with Judge Park. She represented her clients zealously and advocated on their behalf. She was a capable and collegial adversary. She was reasonable and conducted herself with integrity and professionalism—her word was her bond. She knew the law and followed the law. She earned the respect of the federal Judges, the defense bar and the U.S. Attorney's Office.

Judge Park graduated from the Sacred Hearts Academy and from Chaminade University in Honolulu, and then attended the William S. Richardson School of Law. During her third year in law school, she clerked for the Hawaii Civil Rights Commission. After rising through the ranks in the Office of the Federal Public Defender, she joined the McCorriston Miller Mukai MacKinnon law firm where she became a partner. After several years, she left the firm and joined the Gallagher Kane Amai & Reyes law firm. Thereafter, in 2021 she was appointed by Hawaii Governor David Ige to the First Circuit Court. Judge Park has an excellent reputation as

a State Circuit Court Judge. She is even-handed and has an accessible approach. I am now with the Prosecuting Attorney's Office and when she has disagreed with us, she has a reasoned decision and our prosecutors respect her decision. She has a reputation as being a fair judge who follows the law; she is not outcome-oriented. Her decisions are fair, consistent with statutory and case law, and understandable. From all accounts, she has appropriate judicial demeanor and temperament. She is respectful to parties, counsel, jurors and to everyone with whom she interacts.

Judge Park has no agenda; she gives both sides a "fair shake" because she believes in the rule of law. Judge Park will follow the law; she will thoughtfully but firmly and correctly interpret the law, according to precedent, and make a decision. I know she will be an effective judge because she is fair and reasonable, a clear and thoughtful communicator, is open to new or different ways of viewing an issue, and can disagree without being disagreeable.

As a former United States Attorney for the District of Hawaii, I strongly recommend your favorable consideration of Judge Park's nomination to the United States District Court for the District of Hawaii. It is without reservation that I support Judge Park's nomination and confirmation.

Respectfully submitted,

Florence T. Nakakuni

HSBA
Hawaii State Bar Association

September 28, 2023

The Honorable Richard Durbin
Chair, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington D.C. 20510

The Honorable Lindsey Graham
Ranking Member, Committee on the Judiciary
United States Senate
211 Russell Senate Office Building
Washington D.C. 20510

RE: Shanlyn A.S. Park U.S. District Court Judicial Nominee for the District of Hawaii

Dear Senator Durbin and Senator Graham:

The Board of Directors of the Hawaii State Bar Association (HSBA) appreciates the opportunity to submit comments on the nomination of Shanlyn A.S. Park for the position of Judge of the U.S. District Court for the District of Hawaii.

Prior to informing a confirming authority of its findings on a judicial nominee, the HSBA Board of Directors follows a multi-step review process.

- Notification to the nominee of the HSBA appointment review process, which includes a questionnaire requesting educational credentials, legal and other professional work experiences, personal references; a resume; redacted copies of applications and questionnaires submitted to other entities; a form authorizing disclosure from the Hawaii Office of Disciplinary Counsel of any disciplinary action; and an interview with the HSBA Board of Directors in Honolulu.
- Notification via electronic transmission to the HSBA membership of the appointment and a request for comments on the nominee.
- Appointment of a three-person review Subcommittee of HSBA Board members by the HSBA President, which serves as a neutral fact-finding body to review documentation submitted by the nominee, contact references submitted by the nominee, review comments received from the HSBA membership, and conduct follow-up member contact for clarification, if necessary, for presentation to the HSBA Board.
- Submittal of a report by the three-person review Subcommittee to the HSBA President, and subsequently to the entire HSBA Board.
- Meeting of the HSBA President and the nominee prior to the scheduled interview of the nominee by the HSBA Board.

OFFICERS
Rhonda L. Griswold, President
Jesse K. Souki, President-Elect
Mark M. Murakami, Vice-President
Lanson K. Kupau, Secretary
Alika L. Piper, Treasurer

DIRECTORS
Jocelyn W.C. Chong
Steven J.T. Chow
Vladimir Devens
Jessica R. Domingo
Geraldine N. Hasegawa (East Hawaii)
Kristin E. Izumi-Nitao
Ronette M. Kawakami
Carol S. Kitaoka (West Hawaii)
Erin M. Kobayashi
Jacob K. Lowenthal (Maui)
Emiko Meyers (Kauai)
Mark K. Murakami
Paul W. Naso
Zale T. Okazaki
Mark G. Valencia

YLD PRESIDENT
Lisa Yang

IMMEDIATE PAST PRESIDENT
Shannon S. Sheldon

HSBA/ABA DELEGATE
Leslie A. Hayashi

EXECUTIVE DIRECTOR
Patricia A. Mau-Shimizu

1100 Alakea Street, Suite 1000 • Honolulu, HI 96813 • Phone: (808) 537-1868 • Fax: (808) 521-7936 • http://HSBA.org

- Interview of the nominee by the HSBA Board.
- Deliberation of the HSBA Board which culminates in a qualified or unqualified vote.
- Submittal of the HSBA Board's recommendation to the confirming authority.

The HSBA President met with Ms. Park on September 25th to discuss the Subcommittee's findings. On September 26th, Ms. Park was interviewed by the HSBA Board of Directors in an executive session.

Documentation submitted by Ms. Park was reviewed and all the references listed were contacted for their personal opinions and observations. The comments and letters received from HSBA members reflected an affirmation of Ms. Park in all categories of the HSBA criteria which include:

- Integrity
- Diligence
- Legal knowledge and ability
- Professional experience
- Judicial temperament
- Financial responsibility
- Public service
- Ability to fulfill the responsibilities and duties of the position

Ms. Park has extensive litigation experience in both criminal and civil cases, and in both Federal and State Courts. In addition, she has served admirably as a State of Hawaii Circuit Court Judge and is well-respected by her peers. If confirmed, she will also be the first Native Hawaiian to be appointed to the Federal Court, which will help reflect the diversity of our State.

After the interview of the nominee, which included dialogue and questioning relating to her background, experiences, and reasons for pursuing the position of U.S. District Court Judge for the District of Hawaii, the Board of the Hawaii State Bar Association found Ms. Shanlyn A.S. Park to be **QUALIFIED**.[1]

Sincerely,

Rhonda L. Griswold
HSBA President

[1] Please note that, unlike the American Bar Association, the HSBA findings are limited to determining whether a nominee is "qualified" or "unqualified." We do not have other rankings such as "well qualified."

DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU

ALII PLACE • 1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM
PROSECUTING ATTORNEY
Loio Ho'opi'i

THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY
Hope Mua Loio Ho'opi'i

September 28, 2023

Senator Richard J. Durbin, Chairman
Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Lindsey O. Graham, Ranking Member
Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter in Support of Honorable Shanlyn A.S. Park for the United States District Court for the District of Hawaii

Dear Chairman Durbin and Ranking Member Graham:

I am a former Assistant United States Attorney for the District of Hawaii, currently serving as the First Deputy Prosecuting Attorney, City and County of Honolulu, Hawaii. I, along with some of my fellow Deputy Prosecuting Attorneys who have had cases before Judge Shanlyn A.S. Park, write to you and Members of the Committee in support of President Joe Biden's nomination of Judge Shanlyn A.S. Park to serve as a District Judge for the United States District Court, District of Hawaii.

As a former 26-year federal prosecutor, I have prosecuted numerous criminal defendants represented by Judge Park when she was an Assistant Public Defender. In all of her cases, I found her to possess excellent legal skills and a strong commitment to the highest ethical and professional standards.

As current state prosecutors, we also saw Judge Park transition from a criminal defense attorney to her current position as a Circuit Court Judge in the First Circuit, State of Hawaii. Many of us have appeared before Judge Park in criminal cases and found Judge Park's decisions to be well-reasoned, thoughtful, and grounded in the law. On the bench, she consistently demonstrated an even temperament and a respectful demeanor to all attorneys and parties. Judge Park recognized that both prosecutors and defense attorneys are essential to the adversarial process and fairly considered each party's position before issuing a ruling.

Judge Park is well qualified to serve on the U.S. District Court for the District of Hawaii. She is open-minded, fair, and impartial jurist with a clear commitment to equal justice. She possesses the professional competence, highest integrity, and the judicial temperament to tackle the challenges that all federal district court judges face, and will do so with grace and a smile. We support Judge Shanlyn Park A.S. Park's nomination fully and without reservation.

Sincerely,

Thomas J. Brady
First Deputy Prosecuting Attorney

/s/ Cherise Braxton-Brooks
Cherise Braxton-Brooks
Deputy Prosecuting Attorney

Joel Garner
Deputy Prosecuting Attorney

George Parrott
Deputy Prosecuting Attorney

Chase Sakai
Deputy Prosecuting Attorney

October 2, 2023

The Honorable Richard J. Durbin
Chair
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey O. Graham
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Hon. Shanlyn Park to the United States District Court for the District of Hawai`i

Dear Chair Durbin and Ranking Member Graham:

We write on behalf of the Board of Directors of the National Asian Pacific American Bar Association (NAPABA)—Hawai`i Chapter in strong support of the nomination of Judge Shanlyn Park to the United States District Court for the District of Hawai`i and to urge her speedy confirmation. NAPABA is the nation's largest Asian Pacific American membership organization representing the interest of 60,000 attorneys, judges, law professors, and law students. The Hawai`i Chapter includes as members federal and state judges, present and former prosecutors, civil practitioners, and business leaders.

If confirmed, Judge Park will make history as the first woman federal judge of Native Hawaiian descent. Beyond the historical significance of that fact, Judge Park is eminently qualified to be confirmed as a District Judge for the District of Hawai`i. Before being confirmed by the Senate of the State of Hawai`i as a judge of the Circuit Courts of the State of Hawai`i in 2021, Judge Park was an experienced and respected criminal and civil trial attorney, with twenty years of practice in the Office of the Federal Public Defender and five years of civil and criminal practice in private law firms, at both the trial and appellate level. She served as a Criminal Justice Panel Attorney in the District of Hawai`i for four

years. In addition, she trained lawyers and law students in advocacy skills, having taught Appellate Advocacy at her alma mater, the William S. Richardson School of Law, University of Hawai`i and having been responsible for advocacy skills training of other assistant federal public defenders. Judge Park started her legal career in the District Court of the District of Hawai`i. After graduating law school, she served as a law clerk to then U.S. Magistrate Judge Francis Yamashita in the District of Hawai`i.

Judge Park is a daughter of Hawai`i. Born and raised in Hawai`i, she attended grade school, college and law school in the State of Hawai`i.

She has been a member of the National Asian Pacific American Bar Association since 2020 and of the Federal Bar Association since 2018. She is also a member of the Native Hawaiian Bar Association.

Judge Park has served her community in many ways. She served on the boards of the Hawai`i State Bar Foundation, the Legal Aid Society of Hawai`i, Project Focus Hawai`i (providing photography internships to at-risk youth, her alma mater Sacred Hearts Academy, HUGS-Helping, Understanding and Group Support (a Hawai`i nonprofit providing support to families with seriously ill children), The Research Corporation of the University of Hawai`i, and the William S. Richardson School of Law Alumni Association.

The Board of Directors of NAPABA-Hawai`i urges the Senate to vote in favor of the confirmation of Shanlyn Park as a United States District Judge for the District of Hawai`i.

Thank you very much for your consideration.

Sincerely,

Board of Directors
National Asian Pacific American Bar Association-Hawai`i Chapter



By JOHN RHEE
Its President



October 1, 2023

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lindsey O. Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Letter of Support for The Honorable Shanlyn A. S. Park

Dear Chairman Durbin and Ranking Member Graham:

NAPABA is the national association of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 60,000 attorneys and over 90 national, state, and local bar associations. Its members include solo practitioners, large firm lawyers, corporate counsel, legal services and non-profit attorneys, and lawyers serving at all levels of government.

Judge Shanlyn Park has been a state court judge on the First Circuit Court on O'ahu, Hawai'i, since 2021. Previously, Judge Park worked from 2017 to 2021 at the Honolulu law firms McCorriston Miller Mukai MacKinnon, L.L.P., and Gallagher Kane Amai & Reyes. From 1997 to 2017, Judge Park was an assistant federal public defender in the Office of the Federal Public Defender for the District of Hawai'i. Before her service in that office, Judge Park was in private practice at Hisaka Stone & Goto from 1996 to 1997.

She served as a law clerk for Judge Francis I. Yamashita, U.S. Magistrate Judge for the District of Hawai'i from 1995 to 1996. Judge Park received her J.D. from the University of Hawai'i William S. Richardson School of Law in 1995 and her B.A., cum laude, from Chaminade University of Honolulu in 1991.

A graduate of Sacred Hearts Academy and NAPABA member, Judge Park is active in the legal community and serves on the boards of the Hawai`i State Bar Foundation and the Legal Aid Society of Hawai`i. In the greater Hawai'i community, she serves on Project Focus Hawai`i and The Research Corporation of the University of Hawai`i boards.

NAPABA proudly supports Judge Shanlyn A. S. Park's nomination and urges the swift confirmation of her nomination.

Sincerely,



National Asian Pacific American Bar Association
Executive Director

NATIVE HAWAIIAN BAR ASSOCIATION

Aloha mai no, Aloha aku
Where love is given, love should be returned.

P.O. Box 2339, Honolulu, Hawai'i 96804

October 2, 2023

The Honorable Richard J. Durbin, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey O. Graham, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Letter of Support for the Nomination of **Honorable Judge Shanlyn A.S. Park** for the position of United States District Judge of the District of Hawai'i

Dear Chairman Durbin and Ranking Member Graham:

On behalf of the Native Hawaiian Bar Association (NHBA), we write in full support of Judge Shanlyn A.S. Park and recommend her confirmation to the United States District Court of the District of Hawai'i. The Native Hawaiian Bar Association (NHBA) is an association of lawyers, judges and other legal professionals of Hawaiian ancestry that seeks to promote excellence, unity, cooperation, education, and the exchange of ideas among its members and in the larger community. Our organization only endorses candidates of the highest caliber who possess the professional experience and qualities we believe are necessary to do the job. The NHBA strongly endorses Judge Park, a Native Hawaiian attorney and judge. If confirmed, Judge Park will become the first Native Hawaiian woman to be appointed to the Federal bench.

Judge Park has long been an influential and respected member of our legal community. She is well-known for her service as a Federal Defender in the District of Hawai'i. She honed her skills as a talented federal criminal practitioner assigned to handle cases that ranged from minor violations to felonies. Her work ethic, compassion and grit translated into a decades long career where she earned the respect of her peers and the judges she practiced before. Her next endeavor as a Partner at McCorriston Miller Mukai and MacKinnon expanded her experience to a wide range of civil litigation issues. She brought this combination of federal criminal and civil practice to her judgeship when she was appointed to the Circuit Court of the First Circuit in 2021. Since then, she's been a talented judge, presiding over numerous jury trials, motions, sentencings and

hearings on the criminal bench. Judge Park has demonstrated the highest levels of practice and decision-making throughout her legal and judicial career.

In addition to her work experience, Judge Park brings a dedication to public service and the ability to be fair and compassionate to the Federal bench. She served most of her career as a Federal Defender and public servant. When she transitioned to private practice, she still maintained her dedication to public service, taking on pro bono cases as well as federal CJA cases. As a sitting Circuit Court Judge, we have heard nothing but high compliments of her ability to remain fair, levelheaded, yet decisive in her rulings. The common theme is that she is fair and compassionate while equally being tough and holding others to high standards. We believe this is how she will approach her role as a District Court judge: fair and compassionate, with high expectations and the leadership to hold all parties accountable.

The NHBA is proud to support Judge Park's confirmation to the United States District Court of the District of Hawai‘i. We urge her speedy confirmation to the bench. Thank you kindly for your consideration.

Na‘u nō me ka ha‘aha‘a,

/s/ Summer Sylva

Summer Lee Haunani Sylva
President, Native Hawaiian Bar Association
Phone no: 808-387-1053
Email address: slsylva728@gmail.com

The Leadership Conference
on Civil and Human Rights

1620 L Street, NW
Suite 1100
Washington, DC
20036

202.466.3311 voice
202.466.3435 fax
www.civilrights.org

October 3, 2023

The Leadership Conference

SUPPORT THE CONFIRMATION OF JUDGE SHANLYN PARK
TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF HAWAII

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 240 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we write to express our strong support for the confirmation of Judge Shanlyn Park to the U.S. District Court for the District of Hawaii. The Leadership Conference intends to include your position on the confirmation of Judge Park in our voting record for the 118th Congress.

Judge Park's impressive experience protecting the rights of all people makes her extremely well qualified to serve on the federal bench. Since 2021, Judge Park has been a fair-minded circuit court judge for the first circuit of the state of Hawaii judiciary. Prior to this, she served as of counsel at Gallagher Kane Amai & Reyes and as partner and of counsel at McCorriston Miller Mukai MacKinnon LLP. She also worked as an associate attorney at Hisaka Stone & Goto. For 20 years, she served in the federal public defender's office for the District of Hawaii, first as an assistant federal public defender and then as a senior litigator. A graduate of Chaminade University and William S. Richardson School of Law, University of Hawaii, she clerked for Judge Francis Yamas, a U.S. magistrate judge for the District of Hawaii. Judge Park's background as a public defender and her commitment to pursuing equal justice is a welcome addition to this court.

Judge Park has shown a strong commitment to equal justice throughout her career and would be a tremendous asset to our federal courts. Throughout her 20 years as a federal public defender, she represented clients who could not afford an attorney to ensure they had access to justice. Her work as a public defender is particularly notable, as public defenders play a critical role in our legal system, yet they are vastly underrepresented on the federal bench.[1] If confirmed, Judge Park would be the only lifetime judge with public defender experience currently serving on the District of Hawaii, and she would be only the second public defender to ever serve as an Article III judge on this court.[2]

Even after Judge Park returned to private practice, she continued her commitment to helping people navigate the criminal-legal system. She was an attorney for the Criminal Justice Act (CJA) panel for the District of Hawaii, where she continued to represent those unable to afford access to counsel. During her time as a CJA attorney, she was the representative for the Kalilipono Program, a pre-sentencing pilot

---

[1] Maggie Jo Buchanan, *The Startling Lack of Professional Diversity Among Federal Judges*, CENTER FOR AMERICAN PROGRESS (June 17, 2020)

[2] *Biographical Directory of Article III Federal Judges, 1789-present*, FEDERAL JUDICIAL CENTER (Accessed September 2023) Search includes all judges on the U.S. District Court for the District of Hawaii who listed "community defender," "public defender," or "federal defender" as non-volunteer work experience.

The Leadership Conference

program for people who have been convicted.[3] The program offers mentoring and cognitive behavioral treatments, and it helps design a re-entry plan to follow after people have served their sentence — and successful completion of the program may result in a reduction in sentencing.[4] Judge Park was also a volunteer attorney for the Access to Justice program, where she helped litigants without counsel navigate the complicated legal system.[5] Judge Park's dedication to making sure people have access to qualified counsel and to rooting out disparities within the criminal-legal system would bring vital and much needed experience to this role.

In addition to the professional experience that Judge Park would bring to the District of Hawaii, she would bring important lived experiences as well. If confirmed to this position, Judge Park would become the only Native Hawaiian woman to ever serve as an Article III federal judge.[6] To strengthen public trust in the judiciary, our courts should reflect the communities they serve.[7] Diversity of experience, both personal and professional, helps improve judicial decision-making.[8] The confirmation of Judge Park would be an important step towards ensuring that our federal courts reflect and represent the diversity of our nation.

Judge Park is an excellent choice for this position, and we strongly urge the Senate to confirm her to the U.S. District Court for the District of Hawaii. If you would like to discuss this matter further, please contact Lena Zwarensteyn, senior director of the fair courts program, at (202) 466-3311. Thank you for your consideration.

Sincerely,

Maya Wiley
President & CEO

Jesselyn McCurdy
Executive Vice President of Government Affairs

---

[3] Lorenn Walker, Leslie Kobayashi, & Jeannie Lum, *Kapilipono: A U.S. District of Hawai'i Specialty Court Pilot Project* (March 28, 2022).
[4] *Id.*
[5] *Access to Justice Initiatives*, Hawaii State Judiciary (accessed September 2023).
[6] Press Release: *Hirono, Schatz Announce Nomination Of Judge Shanlyn A.S. Park To U.S. District Court For Hawaii*, Office of Senator Mazie Hirono (September 6, 2023).
[7] Maya Sen, *Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time*, 2017 WIS. L. REV. 367 (2017).
[8] Kate Berry, *Building a Diverse Bench: Selecting Federal Magistrate and Bankruptcy Judges*, BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW AND AMERICAN BAR ASSOCIATION JUDICIAL DIVISION (2017).



PRESIDENT
RAKIM BROOKS
CHAIR
PAULETTE MEYER

October 6, 2023

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing more than 150 public interest and civil rights organizations, I write to express our strong support the confirmation of Judge Shanlyn A.S. Park to the United States District Court for the District of Hawaii. If confirmed, Park would become the only Native Hawaiian woman on the federal bench.

Judge Park earned her B.A from Chaminade University of Honolulu and her J.D from the William S. Richardson School of Law at the University of Hawaii. After law school, Judge Park served as a law clerk to the Honorable Francis I. Yamashita, U.S. Magistrate Judge for the District of Hawaii. After clerking, Judge Park worked as an associate at Hisaka Stone & Goto. Her work involved a variety of civil matters, including commercial disputes and insurance defense cases.

Over decades of experience practicing law in Hawaii—including nearly two decades as a public defender—and in her time on Hawaii's First Circuit in Oahu, Judge Park has shown herself to be fair, impartial, and well suited to serve as a federal judge. While an Assistant Federal Public Defender and Senior Litigator at the Office of the Federal Public Defender for the District of Hawaii, Park represented indigent federal criminal defendants charged with felony and misdemeanor offenses, trying 10 misdemeanor and 10 felony jury trials to verdict. Judge Park also brought and argued multiple cases before the U.S. Court of Appeals for the Ninth Circuit.

Following her time in the Office of the Federal Public Defender, Judge Park returned to private practice as a partner at McCorriston Miller Mukai MacKinnon LLP but maintained her dedication to public service. From 2017 to 2021, Judge Park volunteered as an attorney for the state judiciary's Access to Justice Commission. In 2021, she was named to and began serving on the U.S District Court for the District of Hawaii's Criminal Justice Panel, a continuation of her work in public defense. Judge Park earned special recognition from the District Court for her pro bono work in 2021.

Judge Park will bring excellent credentials and both professional and demographic diversity to the federal bench. Given her remarkable qualifications, we urge the Senate to confirm Judge Park to the United States District Court for the District of Hawaii expeditiously.

Sincerely,

Rakim H.D. Brooks

Rakim Brooks

President, Alliance for Justice

Eleven Dupont Circle NW, Suite 500 | Washington, DC 20036 | www.afj.org | t:202-822-6070

Field Offices

Dallas | Houston | Los Angeles | San Francisco

CHAIR
Hon. Ann Claire Williams (Ret.)
acwilliams@jonesday.com
(312) 269-1575

VICE CHAIR
David L. Brown
Dlbrown@hmrlawfirm.com
(515) 244-2141

FIRST CIRCUIT
Kay H. Hodge
khodge@scrnllp.com
(617) 542-6789

SECOND CIRCUIT
Dana M. Hrelic
dhrelic@pullcom.com
(860) 424-4382

THIRD CIRCUIT
G. Glennon Troublefield
gtroublefield@carellabyrne.com
(973) 994-1700

FOURTH CIRCUIT
Pamela J. Roberts
Pamela.Roberts@bowmanandbrooke.com
(803) 726-7420

FIFTH CIRCUIT
Michael D. Hunt
Michael.hunt@phelps.com
(225) 346-0285

SIXTH CIRCUIT
Khalilah V. Spencer
kspencer@honigman.com
(313) 465-7654

SEVENTH CIRCUIT
Nigel F. Telman
ntelman@proskauer.com
(312) 962-3548

EIGHTH CIRCUIT
Sonia Miller-Van Oort
Soniamv@sapientialaw.com
(612) 756-7125

NINTH CIRCUIT
John C. Dwyer
dwyerjc@cooley.com
(650) 843-5228

Eric S. Casher
ecasher@meyersnave.com
(510) 808-2000

TENTH CIRCUIT
Jennifer H. Weddle
Weddlej@gtlaw.com
(303) 572-6500

ELEVENTH CIRCUIT
Suzanne E. Gilbert
Suzanne.Gilbert@hklaw.com
(407) 244-1142

D.C. CIRCUIT
Michael L. Huang
mhuang@tpmlaw.com
(734) 678-1531

FEDERAL CIRCUIT
Joseph Michael Drayton
Jdrayton@cooley.com
(212) 479-6000

SPECIAL ADVISORS
Peter Bennett
pbennett@thebennettlawfirm.com
(207) 831-9999

Vincent Chang
vchang@wmd-law.com
(212) 382-3300

Susan Saltzstein
Susan.Saltzstein@skadden.com
(212) 735-4132

STAFF COUNSEL
Denise A. Cardman
Denise.Cardman@Americanbar.org

AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
Hon. Ann Claire Williams (Ret.)
Jones Day
110 North Wacker Drive, Suite 4800
Chicago, Illinois 60606
acwilliams@jonesday.com

October 3, 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 Judge Shanlyn A.S. Park to the United States District Court for the District of Hawaii

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 Judge Shanlyn A.S. Park, who has been nominated by the President to the United States District Court for the District of Hawaii. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Park is **"Qualified"** to serve on the United States District Court for the District of Hawaii. The Standing Committee's rating means that, under our guidelines, Judge Park satisfies the Standing Committee's very high standards with respect to integrity, professional competence, and judicial temperament and is qualified to perform all the duties and responsibilities required of a federal judge. One committee member recused from voting due to a conflict.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Judge Shanlyn A.S. Park (*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*)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jamel Ken Semper

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

   United States District Judge for the District of New Jersey

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

   United States Attorney's Office
   970 Broad Street, Suite 700
   Newark, New Jersey 07102

   Residence: Jersey City, New Jersey

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

   1981; Brooklyn, New York

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

   2004 – 2007, Rutgers School of Law (Newark); J.D., 2007

   1999 – 2003, Hampton University; B.A., 2003

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

   2018 – present
   United States Attorney's Office, District of New Jersey
   970 Broad Street, Suite 700

Newark, New Jersey 07102
Deputy Chief, Criminal Division (2022 – present)
Chief, Newark Violent Crime Initiative (2021 – present)
Chief, Organized Crime & Gangs Unit (2020 – 2022)
Chief, Violent Crime Unit (2019 – 2020)
Assistant United States Attorney, Economic Crimes Unit (2019)
Assistant United States Attorney, Violent Crimes Unit (2018 – 2019)

2013 – 2018
Essex County Prosecutor's Office
Veterans Courthouse
50 West Market Street
Newark New Jersey 07102
Director, Special Prosecutions Unit (2016 – 2018)
Assistant Prosecutor, Homicide Task Force (2014 – 2016)
Assistant Prosecutor, Carjacking Unit (2014)
Assistant Prosecutor, Trial Unit (2013 – 2014)

2008 – 2013
Union County Prosecutor's Office
32 Rahway Avenue, Elizabeth, New Jersey, 07202
Assistant Prosecutor, Adult Trial Unit (2010 – 2013)
Assistant Prosecutor, Juvenile Unit (2009 – 2010)
Assistant Prosecutor, Appellate Unit (2008 – 2009)

2007 – 2008
Essex County Superior Court of New Jersey
Veteran's Courthouse
50 West Market Street
Newark New Jersey 07102
Law Clerk for the Honorable Harold Fullilove

2003 – 2004
Metropolitan Baptist Church Job Training Program
149 Springfield Avenue
Newark, New Jersey, 07103
G.E.D. instructor

Other affiliations (uncompensated)

Summer 2006
New Jersey Public Defender's Office
31 Clinton Street, Suite 5
Newark, 07102 New Jersey
Summer Intern

Summer 2005
Essex County Superior Court of New Jersey
Veteran's Courthouse
50 West Market Street
Newark New Jersey 07102
Summer Intern for the Honorable F. Michael Giles, J.S.C.

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 inadvertently failed to register for Selective Service before turning 26. My lack of registration was unintentional as I was unaware of my obligation to register prior to turning 26. I did not knowingly or willfully disregard my obligation to register for the Selective Service. During an employment background check after turning 26, I learned that I was obligated to register for the Selective Service and that I had an unregistered status. Prior to my employment at the United States Attorney's Office, with the full support of my prior United States Attorney, the United States Office of Personnel Management ("OPM") adjudicated my lack of registration as neither knowing nor willful and determined that it was not an impediment to my ability to serve in the Department of Justice.

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.

   City of Newark, Special Recognition for Leadership of the U.S. Attorney's Office's Newark Violent Crime Initiative (2022)

   United States Attorney's Office for the District of New Jersey, New AUSA Award (2019)

   National Organization of Blacks in Law Enforcement (NOBLE), Distinguished Advocacy Award (2015)

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

   Association of the Federal Bar of New Jersey (2021 – 2023)

   Essex County Bar Association (2013 – 2018; 2023)

   Garden State Bar Association (2021 – 2022)

New Jersey Black Prosecutors Association (2019 – present)

New Jersey State Bar Association (2022 – 2023)

10. **Bar and Court Admission**:

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

New Jersey, 2007

There have been no lapses in membership.

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

United States District Court for District of New Jersey, 2018

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.

Big Brothers Big Sisters of Essex County (2007 – 2009)

New Jersey Law and Education Empowerment Project (2021 – 2022)

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

To the best of my knowledge, neither of the organizations listed above currently discriminate nor did they formerly discriminate on the basis of 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.

None.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

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

None.

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

The following list reflects my best efforts to identify the speeches or talks that I have delivered. To compile the list, I consulted my own records and internet sources. There may, however, be other speeches or talks that I have been unable to recall or identity, as I may have spoken briefly at events for which I did not retain any record.

June 8, 2023: Keynote Speaker, Annual Lawyers Leading the Way Breakfast 2023, Newark Boys Chorus School's ("NBCS"), Robert Treat Hotel, BW Premier

Collection, 50 Park Place, Newark, New Jersey. I discussed how I became interested in the law and my perspective on leadership. I have no notes, transcript, or recording. The address for the NBCS is 1016 Broad Street, Newark, New Jersey 07102.

May 22, 2023: Panelist, U.S. Attorney's Office Town Hall on community outreach and crime reduction strategies, Camden, New Jersey. I spoke about the U.S. Attorney's Office's efforts to target violent crime and drug trafficking. I have no notes, transcript, or recording. The address for the U.S. Attorney's Office is 970 Broad Street, Suite 700, Newark, New Jersey 07102.

May 18, 2023: Panelist, "Hot Tips in White Collar Defense and Government Investigations," New Jersey State Bar Association's 16th Annual Convention ("NJSBA"), Atlantic City, New Jersey. I discussed the Department of Justice's prioritization of COVID-19 fraud prosecutions. I have no notes, transcript, or recording. The NJSBA is headquartered at One Constitution Square, New Brunswick, New Jersey 08901.

March 22, 2023: Panelist, U.S. Attorney's Office Town Hall on community outreach and crime reduction strategies, Jersey City, New Jersey. I spoke about the U.S. Attorney's Office's efforts to target violent crime and drug trafficking. I have no notes, transcript, or recording. The address for the U.S. Attorney's Office is 970 Broad Street, Suite 700, Newark, New Jersey 07102.

February 22, 2023: Guest Speaker, Fairleigh Dickinson University's Criminal Justice Department's Black History Career Fair, Teaneck, New Jersey. I discussed how I became a prosecutor. I have no notes, transcript, or recording. Fairleigh Dickinson University is located at 1000 River Road, Teaneck, New Jersey 07666.

November 29, 2022: Panelist, U.S. Attorney's Office Town Hall on community outreach and crime reduction strategies, Newark, New Jersey. Video available at https://www.facebook.com/ZionHillNewark/posts/pfbid0CQSCzXgaPvqTcstypzZ1wTQs8M5daa9N8H8DzgASLLUnoQbhP5qgs5EP2gXKuPZFl.

November 22, 2022: Panelist, Thanksgiving Week CLE Blitz, Program 1: Nuts and Bolts of Criminal Law, Continuing Legal Education Criminal Law Course, Essex County Bar Association's ("ECBA"). The webinar panel discussion was about pretrial detentions and jury trial strategy. I have no notes, transcript, or recording. The ECBA is headquartered at 470 Dr. Martin Luther King Jr. Boulevard, Newark, New Jersey, 07102.

October 29, 2022: Panelist, 2022 Criminal Law Institute at the New Jersey Law Center, New Brunswick, New Jersey, 08901. The event was sponsored by the NJSBA. The panel concerned the pandemic's impact on New Jersey's court system, and I discussed how the federal judiciary conducted its practices and procedures during the pandemic. I have no notes, transcript, or recording. The

address for the New Jersey Law Center is One Constitution Square, New Brunswick, New Jersey, 08901].

May 18, 2022: Panelist, Discussion about the inner workings of the United States Attorney's Office ("USAO"), New Jersey State Bar Association's ("NJSBA") Annual Convention Annual Convention, Atlantic City, New Jersey. During the discussion, I detailed the priorities of the USAO's violent crime program and the USAO's collaborative efforts with its law enforcement partners. I have no notes, transcript, or recording. The NJSBA is headquartered at One Constitution Square, New Brunswick, New Jersey 08901.

April 25, 2022: Panelist, "Panel Discussion: Gun Violence in the Communities We Serve," Region 1 Education and Training Conference, Annual Training Conference for New Jersey, New York, Connecticut, and Massachusetts, National Organization of Black Law Enforcement Executives ("NOBLE"), Atlantic City, New Jersey. I discussed my office's efforts to reduce gun violence and organized criminal activity. I have no notes, transcript, or recording. The address for the New Jersey chapter of NOBLE is P.O. Box 1641 Piscataway, New Jersey 08855.

December 7, 2021: Panelist, "US Attorney and Federal Public Defender's Committee Virtual CLE Program: Approaches to Federal Prosecution and Defenses of White Collar and Violent Crime Cases," The Association of the Federal Bar of New Jersey ("AFBNJ"), Virtual Webinar. I discussed practical considerations during criminal investigations and sentencing. I have no notes, transcript, or recording. AFBNJ is located at 970 Broad Street, Newark, New Jersey 07102.

In 2018 and 2019, I gave two lectures on criminal plea negotiations to an advanced negotiations skills class at Seton Hall Law School. I have no notes, transcript, or recording. Seton Hall Law School is located at 1109 Raymond Boulevard, Newark, New Jersey 07102.

November 19, 2016: Panelist, 2016 Criminal Law Institute at the New Jersey Law Center, New Jersey State Bar Association ("NJSBA"), New Brunswick, New Jersey. The panel discussed techniques to investigate and prepare a criminal case. I have no notes, transcript, or recording. The NJSBA is headquartered at One Constitution Square, New Brunswick, New Jersey 08901.

In 2016, I gave a single lecture on New Jersey's bail reform to Rutgers University School of Criminal Justice. I have no notes, transcript, or recording. Rutgers University is located at 195 University Avenue, Newark, New Jersey 07102.

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.

Ande Richards, NJ.com interview following a United States Attorney's Office townhall (Nov. 29, 2022). Video available at https://twitter.com/AndeRichards/status/1599423034682920960.

Thomas Moriarty, *'Monster' Gets Life in Prison*, STAR-LEDGER (May 2, 2018). Copy supplied.

Arrman Kyaw, *Man Pleads Guilty to 2014 Murder of UR Student*, THE UNIVERSITY OF RICHMOND COLLEGIAN (March 29, 2018). Copy supplied.

Mark Di Ionno, *With Guilty Plea, A Family's Dread Is Turned to Relief*, THE STAR-LEDGER (March 7, 2018). Copy supplied.

Thomas Moriarty, *Man Admits Gunning Down Tevlin, 3 Others – He Pleaded Guilty During Jury Selection, Said Killings Were Inspired by Jihad*, THE STAR-LEDGER (March 7, 2018). Copy supplied.

Brendan Tevlin Killer's Terrorism Conviction the First in N.J., NJ ADVANCE MEDIA (March 6, 2018). Video available at https://www.youtube.com/watch?v=60yXPNnHx_I.

David Porter, *Man on 'Jihad' Admits to Killing 4 in Cross-Country Binge*, ASSOCIATED PRESS (March 6, 2018). Copy supplied.

Joshua Jongsma, *Ali Muhammad Brown admits to killing Brendan Tevlin as part of 'jihad'*, Northjersey.com (March 6, 2018). Copy supplied.

Thomas Moriarty, *N.J. Man Guilty of Murder for Luring Victim to His Death*, Star-Ledger (June 8, 2017). Copy supplied.

Esha Ray, *Life Sentence for Nanny-Came Attack*, CBS 2 NEW YORK (June 30, 2016). Video available at https://www.youtube.com/watch?v=i4Mst3aT6U8.

Mark Di Ionno, *For the 'Nanny Cam' Victim, a Life Sentence, Too*, THE STAR-LEDGER (June 30, 2016). Copy supplied.

Robert Sciarrino, *Nanny-Cam Sentencing Press Conference*, NJ ADVANCE MEDIA, (June 29, 2016). Video available at https://www.youtube.com/watch?v=ShVtyavkbV8.

Tom Haydon, *Convicted 'Nanny-cam' Attacker Sentenced to Life in Prison*, NJ ADVANCE MEDIA NJ.com (June 29, 2016). Copy supplied and video available at https://www.youtube.com/watch?v=ShVtyavkbV8&t=1s.

Mark Di Ionno, *Brutal Tape Told The Truth In 'Nanny Cam' Case*, Ledger Local

(June 6, 2016). Copy supplied.

Jury Renders Verdict in Nanny Cam Case, THE ITEM OF MILLBURN AND SHORT HILLS (June 3, 2016). Copy supplied.

Tom Haydon, *Nanny-Cam Suspect Guilty of Assault*, THE STAR-LEDGER (June 2, 2016). Copy supplied.

Tom Haydon, *Nanny-Cam Suspect Not Guilty of Attempted Murder*, THE STAR-LEDGER (June 1, 2016). Copy supplied.

Rob Nelson, *Man Guilty of Assault, Not Attempted Murder in Millburn 'Nanny Cam' Beating*, CHANNEL 7 EYEWITNESS NEWS WABC (June 1, 2016). Video available at https://abc7ny.com/shawn-custis-assault-nanny-cam-beating-robbery/1366628.

Jury Finds 'Nanny Cam' Attacker Not Guilty of Attempted Murder, NJ ADVANCE MEDIA NJ.com (June 1, 2016). Video available at https://www.youtube.com/watch?v=qFszFN0fe40.

Tom Haydon, *'Nanny Cam' Conviction Result of Public 'Stepping Forward,' Prosecutor Says*, NJ ADVANCE MEDIA (June 2016). Copy supplied.

Alleged Gunman in Murder of Brendan Tevlin Demands Evidence Related to Killing, Plus Media Solutions (April 21, 2015). Copy supplied.

Bill Wichert, *Alleged Gunman Seeks to Bar Evidence*, THE STAR-LEDGER (March 31, 2015). Copy supplied.

Essex County Prosecutor's Office, *East Orange Man Sentenced to Life for Fatally Shooting Seton Hall Student*, PRESS RELEASE (May 30, 2014). Copy supplied.

Associated Press, *Man Gets Life for Seton Hall Student's Murder*, ASSOCIATED PRESS: US NEWS ONLINE (May 30, 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.

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 2007 to 2008, I served as a law clerk to the Honorable Harold Fullilove of the Essex County Superior Court of New Jersey.

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

I have not practiced law alone.

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

2008 – 2013
Union County Prosecutor's Office
32 Rahway Avenue
Elizabeth, New Jersey 07202
Assistant Prosecutor

2013 – 2018
Essex County Prosecutor's Office
Veteran's Courthouse
50 West Market Street
Newark, New Jersey 07102
Director (2016 – 2018)
Assistant Prosecutor (2016 – 2018)

2018 – present
United States Attorney's Office, District of New Jersey
970 Broad Street, Suite 700
Newark, New Jersey 07102
Deputy Chief of Criminal Division (2022 – present)
Unit Chief (2019 – 2022)
Assistant United States Attorney (2018 – 2019)

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 my clerkship, I joined the Union County Prosecutor's Office as an assistant prosecutor and represented New Jersey in appellate and post-conviction relief matters. In 2009, I served in family court where I investigated and prosecuted a variety of juvenile matters including sexual

assault and firearms offenses. While assigned to family court, I litigated dozens of bench trials for various juvenile offenses. In 2010, I was assigned to the Adult Trial Unit where I prosecuted felonies ranging widely from check fraud to murder. In 2011 and 2012, I litigated approximately 20 felony jury trials to verdict. During my tenure in the Adult Trial Unit, I maintained an annual caseload of approximately 50 cases at various stages of litigation.

I joined the Essex County Prosecutor's Office ("ECPO") in February 2013 and began my service in the Trial Unit where I maintained an annual caseload of approximately 100 matters at various stages of litigation. In late 2013, I was transferred to the Carjacking Unit where I began to specialize in violent felony offenses. In 2014, I was transferred to the Homicide Unit where I directed investigations and served as lead counsel in homicide prosecutions. From 2016 until my departure from ECPO in 2018, I served as Director of the Special Prosecution Unit where I supervised approximately 20 investigators and assistant prosecutors tasked with targeting and prosecuting violent offenders.

In August 2018, I joined the United States Attorney's Office in the District of New Jersey ("USAO") and began my service in the Violent Crimes Unit where I investigated and prosecuted violent firearms-related federal offenses. In 2019, I was assigned to serve in the Economic Crimes Unit where I investigated and prosecuted white collar crimes including securities fraud and tax evasion. In the fall 2019, I was promoted to Chief of the Violent Crime Unit. In 2020, I was again promoted to Chief of the Organized Crime and Gang Unit. In 2021, I was named the head of the Newark Violent Crime Initiative where I lead a cooperative law enforcement task force of federal, state, and local prosecutors and investigators in Essex County that targets violent criminal enterprises. In 2022, I was promoted to Deputy Chief of the Criminal Division where I am responsible for the establishment and implementation of the USAO's violent crime reduction strategy. In this role, I supervise all phases of criminal investigation and litigation of the approximately 35 federal prosecutors in the General Crimes Unit, Organized Crimes & Gangs Unit, and the Organized Crime Drug Enforcement Task Force.

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

I represented the state of New Jersey from 2008 to 2018. I have represented the United States from 2018 to the present. As a career prosecutor, I have specialized in prosecuting violent crime.

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

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

The entirety of my practice has been in litigation. Since becoming a federal prosecutor in 2018, all my practice has been in federal court in the District of New Jersey, where I make several appearances per year. Prior to serving as a federal prosecutor, my legal practice was in criminal prosecution in New Jersey state court proceedings, where I made daily appearances.

i. Indicate the percentage of your practice in:
   1. federal courts: 30%
   2. state courts of record: 70%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 0%
   2. criminal proceedings: 100%

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

To the best of my recollection, I have tried at least 40 trials to verdict or final decision. I was sole or lead counsel in all but three of those matters.

i. What percentage of these trials were:
   1. jury: 55%
   2. non-jury: 45%

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

I have never practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Fallas*, Criminal No. 21-131 (D.N.J.)

I represented the United States in this matter from 2020 to 2021. Between 2013 and 2017, Fallas owned several construction companies that generated millions of dollars in profits. Fallas attempted to hide his profits from the Internal Revenue Service by using a check cashing business to cash customer payments that he did not report. Fallas also attempted to hide income from the Internal Revenue Service by depositing hundreds of thousands of dollars in customer payments into bank accounts that were not associated with his companies. In sum, Fallas evaded approximately $1.7 million of tax liability through the scheme. I was lead counsel on the case and led the grand jury investigation. I negotiated the plea agreement that resulted in Fallas' guilty plea and two-and-a-half-year term of imprisonment. The Honorable Claire Cecchi of the United States District Court for the District of New Jersey presided over the case.

Counsel for Defendant
Riza I. Dagli
Brach Eichler
101 Eisenhower Parkway
Roseland, NJ 07068
(973) 567-7556

2. *United States v. Hills*, Criminal No. 19-530 (D.N.J.)

I represented the government in this matter from 2018 to 2020. Hills was a ranking member of the Grape Street Crips ("GSC"), one of the largest street gangs in New Jersey, which controlled drug trafficking and other criminal activities across large swaths of Newark. At the height of its reign from 2011 to 2013, the GSC had been responsible for 34 homicides and hundreds of shootings in Newark. In December 2012, Hills, while acting to advance the interests of the GSC, shot a rival drug dealer six times to secure more drug territory for the GSC. Similarly, in February 2013, Hills shot another rival drug dealer eight times to capture his drug territory. I served as co-counsel on the prosecution team that investigated Hills and secured an indictment charging him with conspiracy to commit racketeering and drug trafficking. I negotiated a plea agreement that accounted for the state prison sentences that Hills had already served for the underlying shootings. Hills was sentenced to eight years and three months imprisonment in this matter. The Honorable Madeline Cox Arleo of the United States District Court of New Jersey presided over the case.

Co-Counsel
Osmar Benvenuto

Morgan Stanley
1585 Broadway
New York, NY 10036
(212) 761-4000

Counsel for Defendant
Christopher Adams
Greenbaum, Rowe, Smith, and Davis, LLP
99 Wood Avenue
South Iselin, New Jersey 08830
(732) 549-5600

3. *United States v. Adebayo*, Criminal No. 19-68 (D.N.J.)

I represented the government in this matter in 2019. Adebayo was a computer programmer who utilized the dark web to purchase personal identifying information ("PII") of hundreds of victims in the U.S. and Europe. Adebayo used crypto currency to purchase this PII from criminal entities based in Russia and Asia. Upon obtaining the PII, Adebayo hacked into his victims' email accounts and/or telecom service accounts and ordered replacement credit cards in their names to be sent to mailing addresses he controlled. Upon fraudulently obtaining credit cards in his victims' names, Adebayo used the credit cards to purchase high end luxury items that he later fenced to others. I served as lead-counsel for the prosecution team that briefed and successfully litigated extensive motion practice before securing Adebayo's conviction after a two-week trial. The Honorable Madeline Cox Arleo of the United States District Court of New Jersey presided over the case and sentenced Adebayo to five years and five months of imprisonment.

Co-Counsel
Catherine R. Murphy
Rockefeller Capital Management
525 Washington Boulevard, Suite 1410
Jersey City, NJ 07310
(212) 549-5100

Counsel for Defendant
Christopher Adams
Greenbaum, Rowe, Smith, and Davis, LLP
99 Wood Avenue
South Iselin, NJ 08830
(732) 549-5600

4. *State v. Brown*, Indictment No. 15-07-01541-I

I represented New Jersey in this terrorism and murder case from 2014 to 2018. This was the first prosecution of a homicide under New Jersey's domestic terrorism statute. In

spring 2014, Brown became self-radicalized by ISIS propaganda on the internet. Brown made plans to travel to Syria to engage in "Jihad" against the U.S. government, which he deemed responsible for "millions" of lives lost in Middle East conflicts. To advance his jihad against the U.S. government, Brown shot and killed three men in King County, Washington in May and June 2014. Following the King County killings, Brown fled to West Orange, New Jersey where he prepared to travel to the Middle East. While in West Orange, Brown shot and killed a 19-year-old college student and dumped the victim's body in a parking lot. After his capture, Brown confessed his jihad and plans to exact revenge on the U.S. government by killing Americans. I was the lead prosecutor on this matter and, pursuant to New Jersey's domestic terrorism statute, I obtained authorization from the New Jersey Attorney General to charge Brown with domestic terrorism. I briefed pretrial motions to introduce Brown's confession and introduce evidence of Brown's Washington killings to establish his intent to kill the victim to exact his revenge against the U.S. government. Following extensive pre-trial testimonial hearings, Brown pled guilty without a plea agreement during jury selection on March 6, 2018. Brown's guilty plea was entered while he was serving a 35-year sentence for an armed robbery he committed days after the West Orange murder. In addition to first degree murder, Brown pled guilty to first degree terrorism, first-degree felony murder, first-degree carjacking, first-degree robbery, unlawful possession of a handgun, possession of a weapon for an unlawful purpose. In May 2018, Brown was sentenced to a mandatory life sentence by the Honorable Ronald D. Wigler of the Essex County Superior Court of New Jersey, who presided over the case.

Co-Counsel
Purva Deshpande
Essex County Prosecutor's Office
50 West Market Street
Newark, NJ 07102
(973) 621-4700

Counsel for Defendant
Albert Kapin
Albert Kapin Law
80 Main Street (#580)
West Orange, NJ 07052
(973) 325-0066

5. *State v. Hunt*, Indictment No. 16-02-00414-I

I represented New Jersey in this matter from 2015 to 2017. In June 2015, Hunt assaulted his girlfriend and stole her cell phone after he observed her speaking to a male acquaintance while she was on a date with Hunt. Hunt fled from the scene of the assault with his girlfriend's phone before police and medical services arrived to take his girlfriend to a hospital for treatment for her injuries. Upon searching the contents of the phone, Hunt learned his girlfriend exchanged text messages with another male, the victim, and had made plans to see the victim that evening. Hunt then pretended to be his

girlfriend and used her phone to send text messages to the victim in order to lure the victim to a restaurant in Irvington, New Jersey. Hunt also commissioned his other girlfriend to drive him to the Irvington restaurant. Once Hunt lured the victim to the area, he ambushed and executed the victim with a firearm. I served as sole counsel for the prosecution. I successfully briefed and litigated pretrial motions that allowed the prosecution to introduce evidence of Hunt's assault on his girlfriend on the night of the murder to establish Hunt's motive to kill the victim because of his jealousy toward other men. At trial, neither of Hunt's girlfriends were cooperative while testifying for the prosecution. The girlfriend that Hunt assaulted shortly before the murder testified that Hunt did not assault her, but instead, she injured herself falling on the night of the murder. The girlfriend that brought Hunt to the murder scene alleged she did not observe the murder despite being a short distance from the away at the time of the incident. Ultimately, we secured a guilty verdict with the use of prior statements from Hunt's girlfriends, forensic cellular data evidence that placed Hunt at the scene of the murder, and surveillance video of the killing. Hunt was sentenced to life in prison. The Honorable James W. Donohue of the Essex County Superior Court of New Jersey presided over the case.

Counsel for Defendant
Thomas R. Ashley
The Law Office of Thomas R. Ashley
50 Park Place (#1400)
Newark, NJ 07102
(973) 623-0501\

6. *State v. Custis*, Indictment No. 14-01-00204-I

I represented New Jersey in this matter from 2014 to 2016. In June 2013, Custis forcibly entered a home in Millburn while a mother and her two small children were preparing breakfast. Upon entering the home, Custis knocked the victim unconscious in front of her child and continued to violently assault the victim after she lost consciousness. Custis then threw the victim down a flight of stairs and locked her in the basement of her home. Custis then robbed the home and fled the scene. The assault was captured on a "nanny-cam" video that was released to the public to generate tips. While serving as lead prosecutor on the case, I discovered that one of the first officers who responded to the scene was captured on video calling Custis a racial slur. After disclosing my discovery to the trial court and the defense, the case became racially charged and questions about the integrity of the police were raised by the defense. I successfully briefed and litigated pretrial motions that allowed the prosecution to introduce articles of Custis' clothing that were stained with the victim's blood and were also depicted on the "nanny-cam" video. During the trial, I served as lead counsel and took testimony from approximately 20 witnesses. The jury convicted Custis of robbery and assault but acquitted him of attempted murder. The prosecution made use of forensic evidence as well as the testimony of members of the community who identified Custis as the assailant on the video. Essex County Superior Court Ronald D. Wigler presided over the case and sentenced Custis to life in prison.

Co-Counsel
Olajide Araromi
Mastercard
2000 Purchase Street
Purchase, NY 10577
(914) 249-2000

Counsel for Defendant
John J. McMahon
The Law Offices of John J. McMahon
80 Main Street (#580)
West Orange, NJ 07052
(973) 761-2210

7. *State v. Brown*, Indictment No. 15-01-00001-I

I represented New Jersey in this matter from 2014 to 2016 where Brown was charged with first degree armed robbery and two firearms offenses. Two weeks after Brown had executed a college student in West Orange, New Jersey to advance his jihad against the U.S. government, he evaded capture by living in a densely forested area a few miles from the murder scene. On the morning of July 10, 2014, Brown committed a gunpoint robbery of a victim who was entering his car near an apartment complex in West Orange. During the robbery, Brown threatened to kill the victim before locking the victim inside the trunk of their vehicle. Following a two-week manhunt, law enforcement captured Brown in a makeshift campsite. At the time of his capture, Brown was found with the firearm he used in the murder and the robbery. Brown was also found with a journal that detailed his plans to travel the Middle East to join ISIS. I was the sole prosecutor who secured the indictment and litigated the two-month trial that resulted in Brown's conviction on the robbery and firearms charges. The Honorable Michael Petrolle of the Essex County Superior Court of New Jersey presided over the case and sentenced Brown to 36 years in state prison.

Counsel for Defendant
Albert Kapin
Albert Kapin Law
80 Main Street (#580)
West Orange, NJ 07052
(973) 325-0066

8. *State v. Welch*, Indictment No. 11-09-01648-I

I represented New Jersey in this matter from 2013 to 2014. In September 2010 Welch unlawfully entered a private house party hosted by fraternity members enrolled at Seton Hall University. Shortly after Welch was asked to leave the party, he became argumentative and started a physical altercation with members of the fraternity and was

forcibly ejected from the premises. Minutes later, Welch returned to the party armed with a gun, kicked down the front door of the residence, and shot five people, killing one. I served as co-counsel on the prosecution team, and I was responsible for preparing witnesses for trial. During the trial, the defense argued that a shoe print found on the door Welch kicked down did not come from Welch's shoes and, thus, a third party was responsible for the murder and mass shooting. I was tasked with cross examining a retired FBI special agent who testified as a defense expert witness in shoe print analysis. The jury convicted Welch for the mass shooting and the murder. Welch was subsequently sentenced to life in prison. The Honorable Robert Gardner of the Essex County Superior Court of New Jersey presided over the case.

Co-Counsel
Romesh Sukhdeo
Essex County Prosecutor's Office
50 West Market Street
Newark, NJ 07102
(973) 621-4700

Counsel for Defendant
Thomas A. Cataldo
Cataldo Law
52 South Street
Morristown, NJ 07960
(973) 769-1436

9. *State v. Williams*, Indictment No. 12-03-000728-I

I represented New Jersey in this matter in 2013. In June 2011, Williams carjacked a victim at a gas station as the victim was pumping air into his car tire. When the victim tried to pull Williams out of the vehicle, Williams drove the vehicle out the gas station, dragging the victim 45 yards into oncoming traffic when the victim's leg became trapped under the vehicle. Williams escaped from the scene. Days later, law enforcement recovered the vehicle and subsequently identified Williams's DNA profile on several items recovered from the vehicle. The victim subsequently identified Williams in a photo array. Prior to trial, I successfully litigated against a series of motions filed by the defense including a motion to suppress the photo identification of Williams. I was the sole counsel in this case and litigated the case to jury verdict. Williams was convicted at trial and sentenced to 25 years in prison. The Honorable Michael Ravin of the Essex County Superior Court of New Jersey presided over the case.

Counsel for Defendant
Deidre McMahon
Office of The Public Defender
31 Clinton Street
Newark, NJ 07101
(973) 648-6207

10. *State v. Zapata*, Indictment No. 10-03-00211-I

I represented New Jersey in this matter from 2010 to 2011. In the pre-dawn hours of November 21, 2009, Zapata hid on a sidewalk near the residence of the victim, his ex-girlfriend, and waited for her to arrive home. When the victim arrived in the area in her vehicle, Zapata forcibly entered the victim's vehicle and ordered her to drive to a nearby park. While at the park, Zapata held the victim against her will for hours and demanded that the victim renew their romantic relationship. As Zapata held the victim against her will, he assaulted and bit the victim, causing her to bleed throughout her vehicle. Zapata then ordered the victim to drive back to her residence, but physically prevented her from leaving the vehicle until a bystander intervened and contacted the police. Zapata fled the scene and was arrested eight months later. I was the sole prosecutor who litigated this case. Zapata and the victim reconciled just before the start of the trial and the victim refused to fully cooperate with the prosecution during the trial. Despite the victim's unwillingness to cooperate, I obtained Zapata's kidnapping conviction at trial using photos of the victim's injuries and blood stains, the testimony of the bystander, and the victim's initial statement. The Honorable Miriam Spann of the Union County Superior Court of New Jersey presided over the case and sentenced Zapata to 15 years in prison.

Counsel for Defendant
John Lohse (deceased)

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

In addition to matters I have personally litigated, I have supervised hundreds of criminal cases handled by prosecutors in state and federal court, that went to trial and were resolved prior to trial. Those cases have spanned a wide variety of areas of criminal law, including the dissemination of child pornography, illegal re-entry, bank fraud, wire fraud, drug trafficking, Hobbs Act robbery, identity theft, tax evasion, money laundering, firearms trafficking, sex trafficking, cybercrimes, kidnapping, murder for hire, racketeering, and violent crime in aid of racketeering. I have supervised prosecutors in numerous jury trials in state and federal courts. In my supervisory roles at the United States Attorney's Office, I supervise prosecutors in all phases of criminal investigations and litigation. Specifically, I have reviewed, edited, and authorized criminal complaints, legal process, court submissions, and plea agreements drafted by the prosecutors under my direction. I regularly collaborate with federal prosecutors to develop trial strategies in advance of and during litigation. I regularly collaborate with federal law enforcement agencies to authorize investigations and I have directed dozens of federal prosecutors under my supervision to take certain investigative actions in cases that I supervise.

Since 2022, I have served as the head of the United States Attorney's Office's violent crime program where I am tasked with supervising our Violent Crime Initiative ("VCI"). The VCI is a joint task force made up of dozens of federal, state, and local law enforcement personnel, who investigate violent criminal enterprises and drug traffickers operating in New Jersey's major cities. The VCI is a collaborative effort that targets criminal offenders who are driving violence in their respective communities. The VCI aims to reduce the scourge of gun violence in New Jersey's vulnerable communities. In 2022, Newark and Jersey City experienced more than 25 percent reductions in total shooting incidents. I have supervised VCI investigations that resulted in prosecutions of dozens of defendants for drug trafficking, firearms offenses, murder, and racketeering.

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

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.

    There are potential conflicts that could arise in criminal matters that I worked on, supervised, or became aware of while serving as a prosecutor.

    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 laws, rules, and practices governing such circumstances.

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

I have dedicated my entire career to public service, both as a state and federal prosecutor. In these roles, I have been precluded from providing pro bono representation, but I have previously been involved in Big Brothers Big Sisters of Essex County and New Jersey Law and Education Empowerment Project.

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 23, 2022, I applied to the judicial screening committee for Senator Cory Booker. On March 28, 2023, I interviewed with Senator Booker's screening committee. On June 7, 2023, I interviewed with Senator Robert Menendez. On June 16, 2023, I interviewed with Senator Booker. On June 29, 2023, the White House Counsel's Office informed me that I had been recommended as a potential candidate for nomination. On June 29, 2023, I interviewed with attorneys from the White House Counsel's Office, who informed me on July 1, 2023, that I would be moving forward in the selection process. Since July 5, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 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. Jamel Ken Semper Nominee to the United States District Court for the District of New Jersey

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 or associate myself with that statement. If I am fortunate enough to be confirmed, I would be duty bound to apply binding Supreme Court and Third Circuit precedent to the facts of every case before me. None of the rulings I would make would be influenced by personal opinions or any interest in the outcome.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's response was: "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

   Response: I do not agree with this statement, and it is not the approach I would take if I were fortunate enough to be confirmed. If I were confirmed, I would be duty bound to apply binding precedent of the Supreme Court and Third Circuit.

3. **You have no experience in civil litigation. What steps will you take to ensure you are prepared to handle complex civil cases that come before you?**

   Response: I have had the opportunity to serve as a prosecutor in state and federal court where I was exposed to countless legal doctrines and litigation principles. Over my fifteen-year career, I have litigated over 40 trials to conclusion, and I had to study and become proficient in different areas of state and federal law, including the federal rules of evidence, state domestic terrorism, and federal racketeering. I believe my expansive experiences will help me get up to speed in areas of law that I have not yet been exposed to. I am comfortable with adjusting and learning new areas of the law. If confirmed, I would seek guidance from judges in my district, utilize training information resources from the federal judiciary, and aim to hire law clerks with legal backgrounds different from my own to expand my frame of knowledge in order to thoroughly work on the matters in my court.

4. **In your committee questionnaire, you state that you "inadvertently failed to register for the Selective Service before turning 26" and that you only learned of your obligation during an employment background check after turning 26. You further state: "Prior to my employment at the United States Attorney's Office, with the full support of my prior United States Attorney, the United States Office of Personnel**

Management ('OPM') adjudicated my lack of registration as neither knowing nor willful and determined that it was not an impediment to my ability to serve in the Department of Justice."

a. **Did you ever falsely indicate, either verbally or in writing, that you had registered for the Selective Service?**

Response: No.

5. **Please describe the relevant law governing when a federal court may entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court.**

Response: In accordance with 28 U.S.C. § 2254, a person in state custody following a judgment, and after the exhaustion of state appellate remedies, can file a writ of habeas corpus challenging their detention on the grounds that their conviction was contrary to clearly established laws of the United States.

6. **Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.**

Response: Pursuant to 28 U.S.C. § 2255, a sentenced federal prisoner may seek for a court to vacate, set aside or correct the sentence if the sentence was imposed in violation of the Constitution or laws of the United States. Under 28 U.S.C. § 2255, a prisoner in custody under a sentence of a court established by Act of Congress claiming "the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence." *Jones v. Hendrix*, 599 U.S. 465, 472 (2023).

7. **Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.**

Response: In *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023), the Supreme Court struck down the race-based admissions programs of the University of North Carolina and Harvard College. The Court held that the programs violated the Equal Protection Clause of the Fourteenth Amendment. Specifically, the Court found the schools' race-based admissions programs could not survive strict scrutiny because the asserted goals of the race-based admissions programs were not sufficiently measurable or coherent under the rubric of strict scrutiny. *Id.* at 2166.

8. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?**

   Response: While I am tasked with conducting initial interviews of candidates seeking employment at the U.S. Attorney's Office in the District of New Jersey, I have not been involved in hiring decisions.

   If yes, please list each job or role where you participated in hiring decisions.

9. **Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

   Response: No.

10. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

    Response: No.

11. **Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

    If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

    Response: No.

12. **Under current Supreme Court and Third Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?**

    Response: Yes, in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995), the Supreme Court held that racial classifications imposed by federal, state, or local governments must survive strict scrutiny.

13. **Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

Response: In *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), the owner of a limited liability company (LLC) that sought to produce wedding websites brought a pre-enforcement action against members of the Colorado Civil Rights Commission, and other Colorado officials, to enjoin the defendants from compelling the LLC, through enforcement of the Colorado Anti-Discrimination Act (CADA), to create wedding websites for same-sex couples that would convey messages inconsistent with the LLC owner's religious belief that marriage should be reserved to unions between one man and one woman. The Supreme Court found the wedding websites the LLC sought to create for customers qualified as "pure speech" under the First Amendment because the websites promised to contain images, words, symbols, and other modes of expression. *Id.* at 2312. In enjoining enforcement of the CADA, the Supreme Court held that the First Amendment does not allow for individuals to be compelled to produce or create speech that is inconsistent with their religious beliefs. *Id.* at 2313-2314.

14. **In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."**

Is this a correct statement of the law?

Response: Yes, *Barnette* has been reaffirmed repeatedly, including recently in *303 Creative LLC*.

15. **How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?**

Response: The Supreme Court held that unconstitutional "content-based" laws impermissibly bar certain speech because of its content or expressed message. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015), citing *Carey v. Brown*, 447 U.S. 455, 462 (1980). When determining if a regulation is "content-based," courts must consider if the regulation of speech "on its face" draws a distinction based on the message a speaker conveys. The Supreme Court held that "content-based" regulations trigger strict scrutiny. Speech regulations that are facially content neutral will also trigger strict scrutiny if they were adopted by the government because of disagreement with the message conveyed in the speech.

16. **What is the standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: The Supreme Court has defined "true threats" as statements where the speaker means to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals, and the speaker need not actually intend to carry out the threat. *Virginia v. Black*, 538 U.S. 343, 359 (2003).

17. **Under Supreme Court and Third 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: In *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018), the Supreme Court has stated that "facts" address determinations of "who did what, when or where, how or why." *Id.*, citing *Thompson v. Keohane,* 516 U.S. 99, 111 (1995). In the Third Circuit, facts in cases have been deemed "basic, primary or historical" occurrences. *Washington v. Sobina*, 509 F.3d 613, 621 (3d Cir. 2007). The Supreme Court and the Third Circuit have held that a court is better positioned to address matters when there is no direct statutory authority, and the issue is between a legal standard and a historical fact. *Miller v. Fenton*, 474 U.S. 104, 114 (1985); *United States v. Brown*, 631 F.3d 638, 642–43 (3d Cir. 2011). In *Brown*, the Third Circuit stated the appropriate standard of review for mixed-question cases is determined by reference to the underlying principles of sound judicial administration. "If application of the rule of law to the facts requires an inquiry that is 'essentially factual'—one that is founded 'on the application of the fact-finding tribunal's experience with the mainsprings of human conduct'—the concerns of judicial administration will favor the district court, and the district court's determination should be classified as one of fact reviewable under the clearly erroneous standard. If, on the other hand, the question requires us to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles, then the concerns of judicial administration will favor the appellate court, and the question should be classified as one of law and reviewed de novo." *United States v. Brown*, 631 F.3d 638, 643 (3d Cir. 2011).

18. **Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: 18 U.S.C. 3553(a) does not direct a court to give additional weight to a specific sentencing factor. As a federal prosecutor, I have uniformly applied 18 U.S.C. 3553(a) in a fact-specific manner without partiality to any one factor. If I am fortunate enough to be confirmed, I will consider all the sentencing factors and apply them appropriately to the facts of every matter that comes before me. Pursuant to 18 U.S.C. 3553(a), I will impose a sentence that is sufficient, but not greater than necessary in every criminal case.

19. **Please identify a Supreme Court decision from the last 50 years that you think is particularly well reasoned and explain why.**

Response: As a judicial nominee, I must not comment on the reasoning of Supreme Court precedent. If I am fortunate enough to be confirmed, I will be duty bound to apply binding Supreme Court and Third Circuit precedent to all the matters that will come before me.

20. **Please identify a Third Circuit judicial opinion from the last 50 years that you think is particularly well reasoned and explain why.**

Response: As a judicial nominee, I must not comment on the reasoning of Third Circuit precedent. If I am fortunate enough to be confirmed, I will be duty bound to apply binding Supreme Court and Third Circuit precedent to all the matters that will come before me.

21. **Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: 18 U.S.C. § 1507 prohibits picketing and parading that is intended to obstruct, impede, or influence the administration of justice. The statutory language is: "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."

22. **Is 18 U.S.C. § 1507 constitutional?**

Response: In *Cox v. State of Louisiana*, 379 U.S. 559, 563 (1965), the Supreme Court upheld a Louisiana statute that tracks with 18 U.S.C. § 1507. The Supreme Court held that "picketing and parading—is subject to regulation even though intertwined with expression and association." *Id.* I am unaware of a case that has come before the Supreme Court, or any federal court, that directly addresses the constitutionality of 18 U.S.C. § 1507.

23. **Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

24. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

    a. **Was *Brown v. Board of Education* correctly decided?**

    Response: Yes. The unconstitutionality of *de jure* racial segregation in our educational systems is well settled and is unlikely to be re-litigated in our courts, and thus I do not believe I am violating the Code of Conduct for United States Judges in answering this question.

    b. **Was *Loving v. Virginia* correctly decided?**

    Response: Yes. The constitutionality of interracial marriage is well settled and is unlikely to be re-litigated in our courts, and thus I do not believe I am violating the Code of Conduct for United States Judges in answering this question.

    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?**
    l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**
    m. **Was *303 Creative LLC v. Elenis* correctly decided?**

    Response to sub-questions c to m: As a judicial nominee, I am subject to Canon 3(a)(6) of the Code of Conduct for United States Judges, and I cannot make public comment on cases which may come before me as a judge because this would violate Canon 3(A)(6). All of the cases above, with the exception or *Roe* and *Casey*, which were overturned by *Dobbs*, are binding precedent that I would be duty bound to follow and apply. If I am fortunate enough to be confirmed, I would unfailingly apply binding precedent.

25. **What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

    Response: In *Bruen*, the Supreme Court held the government must demonstrate that the regulation is consistent with this nation's historical tradition of firearm regulation. The Supreme Court stated that, "[w]hen 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." *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2129-2130 (2022).

26. **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.

27. **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 the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

       Response: No.

28. **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.

29. **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.

30. **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.

31. **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 23, 2022, I applied to the judicial screening committee for Senator Cory Booker. On March 28, 2023, I interviewed with Senator Booker's screening committee. On June 7, 2023, I interviewed with Senator Robert Menendez. On June 16, 2023, I interviewed with Senator Booker. On June 29, 2023, the White House Counsel's Office informed me that I had been recommended as a potential candidate for nomination. On June 29, 2023, I interviewed with attorneys from the White House Counsel's Office, who informed me on July 1, 2023, that I would be moving forward in the selection process. Since July 5, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2023, the President announced his intent to nominate me.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **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 or include any particular case or type of case in your questionnaire?**

Response: No. The cases I selected were my own choices. In preparing my Senate Judiciary Questionnaire responses, I received formatting edits from the Department of Justice, Office of Legal Policy.

38. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: On June 29, 2023, the White House Counsel's Office informed me that I had been recommended as a potential candidate for nomination. On June 29, 2023, I

interviewed with attorneys from the White House Counsel's Office, who informed me on July 1, 2023, that I would be moving forward in the selection process. Since July 5, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2023, the President announced his intent to nominate me.

39. **Please explain, with particularity, the process whereby you answered these questions.**

Response: I received the questions on the evening of October 11, 2023. After reviewing the questions, I drafted responses after reviewing OLP's formatting directives for inserting answers. I received limited feedback from OLP and then finalized and submitted my responses.

Senate Judiciary Committee
Nominations Hearing
October 4, 2023
Questions for the Record
Senator Amy Klobuchar

<u>Jamel Semper, to be U.S. District Court Judge for the District of New Jersey</u>
Since 2018, you have served as an Assistant U.S. Attorney for the District of New Jersey. You have served as Chief of the Violence Crimes Unit and later went on to serve as the Deputy Chief of the Office's Criminal Division. You have also supervised the New Jersey USAO's Violent Crime Initiative, which is a joint task force made up of dozens of federal, state, and local law enforcement personnel who investigate criminal enterprises and drug traffickers.

- **How did these experiences prepare you to deal with the complexities you will encounter if confirmed to serve as a federal district court judge?**

  Response: Serving as a line prosecutor in state court allowed me to develop an intimate knowledge of every stage of litigation. The substantial volume of my caseload taught me how to multitask. My current role of leading dozens of federal prosecutors and law enforcement task force members has helped to sharpen my analytical approach to legal matters and my managerial skills. If I am fortunate enough to be confirmed, I would look to utilize my skill set to manage a large and complex docket while also leading a judicial chamber that will be comprised of junior lawyers looking for guidance. I am eager to take on the challenge.

- **What have you learned about our criminal justice system during your time as a prosecutor and how will these experiences serve you if confirmed as a federal district court judge?**

  Response: I have learned that people are complex, and they can end up on any side of our criminal justice system for countless reasons. I have learned that our democracy is strengthened by our institutions that endeavor to apply our collective will, distilled to laws, to complicated issues. If confirmed, I will use the breadth of my experiences to follow and apply the law as a district court judge.

Senator Mike Lee
Questions for the Record
Jamel Semper, Nominee to the United States District Court for the District of New Jersey

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

   Response: If I am fortunate enough to be confirmed, my judicial philosophy will be to approach every matter with an open mind, thoroughly review the record in order to target the key legal issues, scrupulously review applicable statutes and binding precedents, and craft well-reasoned clear opinions that are invariably rooted in binding precedent.

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

   Response: Binding Supreme Court precedent directs lower courts to begin by thoroughly examining the text of the statute itself. Statutory interpretation begins and ends with the statutory text. *National Assn. of Mfrs. v. Department of Defense*, 583 U.S. 109, 127 (2018). If I determined that the text of the statute was unambiguous after review, I would apply its plain meaning to the facts before me. If the statute is ambiguous, I would look to binding Third Circuit and Supreme Court precedent as to how to interpret the statute and apply the relevant canons of statutory construction.

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

   Response: I would begin by thoroughly examining the text of the provision because the Supreme Court's opinions have set forth the "primacy" of the role the Constitution's text plays in its interpretation. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1894 (2021). I would also look for binding Third Circuit and Supreme Court precedent on how to apply the provision and apply it to the facts of the case. If there is no binding precedent, I would look for analogous precedent to interpret the provision and apply it to the facts. I would also look to apply any analytical framework that the Third Circuit or the Supreme Court has proscribed.

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

   Response: The Supreme Court has used text and the original meaning of a constitutional provision to resolve certain constitutional questions. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *Crawford v. Washington*, 541 U.S. 36 (2004).

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: My approach would parallel my response in Question 2.

6. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: A statute's meaning is fixed from the point of its ratification and does not change or evolve overtime. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2132 (2022). "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." *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731, 1738 (2020).

7. What are the constitutional requirements for standing?

Response: To establish standing, a party must have suffered a particularized injury in fact that is connected or traceable to the challenged conduct and there must be likelihood of redressability through lawsuit.

8. 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 Article I of the Constitution granted Congress implied powers under the "Necessary and Proper Clause." *McCulloch v. Maryland*, 17 U.S. 316 (1819). Article I § 8 of the Constitution grants Congress the power to, "[t]o make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

9. 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 stated the constitutionality of a congressional action "does not depend on recitals of the power it undertakes to exercise." *National Federation of Independent Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). If confirmed, I would follow binding precedent when examining the constitutionality of a statute.

10. 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 fundamental rights that are deeply rooted in our national history and tradition and are implicit in the nation's scheme of ordered liberty. *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228, 2242 (2022); *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). Examples of such rights include the right to travel freely between the

states, *Sáenz v. Roe*, 526 U.S. 489 (1999), and the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967).

11. What rights are protected under substantive due process?

Response: Please see my response to Question 10.

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, 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 overturned *Lochner* and held that liberty to contract is subject to the restraints of due process. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). The Supreme Court in *Griswold* held that the right to contraceptives is a substantive due process right. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

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

Response: Congress can set forth laws that regulate interstate and foreign commerce along with commerce to Indian tribes. In *United States v. Lopez*, 115 S.Ct. 1624, 1629 (1995), the Supreme Court 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.

14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has stated that race, religion, and national origin are suspect classes that would trigger strict scrutiny. *City of New Orleans v. Duke*, 427 U.S. 297, 303 (1976).

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

Response: The principle of checks and balances is an essential feature of our constitutional system where power among the branches is shared and balanced.

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 utilize binding precedent to identify the framework for assessing the authorities of the branches of government. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: If I am fortunate enough to be confirmed, I would be duty bound to consider the facts of a matter, the applicable statutes, and binding legal precedent.

18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Both acts would violate the law.

19. 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 particular period of the Supreme Court's jurisprudence. If I am fortunate enough to be confirmed, I would be bound to adhere to binding precedent from the Supreme Court and the Third Circuit and render decisions on the matters before me.

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

Response: The principle of judicial review was first set forth by the Supreme Court in *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Black's Law Dictionary defines "judicial supremacy" as the principle "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." Conversely, the Black's Law Dictionary defines "judicial review" as a court's "power to review the actions of other branches or levels of government."

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Pursuant to Article VI of the Constitution, every elected official is bound by oath to support the Constitution, which explicitly enumerates the role of the judicial branch in Article III. Elected officials are bound to adhere to the decisions of the Supreme Court based on the longstanding precedent of judicial supremacy. *Cooper v. Aaron*, 358 U.S. 1 (1958). As a judicial nominee, I cannot comment on how elected officials execute or discharge their duties. If I were confronted with an

issue involving a branch of government's response to a judicial opinion, I would be duty bound to follow binding precedent of the Supreme Court and the Third Circuit.

22. 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: Judicial officials are limited to resolve only the cases and controversies that come before them. If confirmed, I would scrupulously honor that principle.

23. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: If confirmed, I would be duty bound to apply binding precedent from the Supreme Court and the Third Circuit and I would have no authority to go outside the bounds of binding precedent. I would scrupulously honor that principle.

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

Response: None. 18 U.S.C. 3553(a) details the factors that courts must consider when sentencing a defendant. The defendant's "group identity" plays no role in the sentencing analysis.

25. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am unfamiliar with this statement, and I am unaware of the context in which it was given. I am not aware of any binding precedent relating to equity. Black's Law Dictionary defines "equity" as "impartiality." If confronted with a question related to "equity," I would be duty bound to follow binding precedent.

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

Response: Please see my response to Question 25 for a definition in "equity." Black's Law Dictionary defines "equality" as the "condition of being equal."

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

Response: The Constitution, including the Fourteenth Amendment, makes no reference to "equity." If confirmed, I would be duty bound to apply binding precedent of the Supreme Court and The Third Circuit.

28. How do you define "systemic racism?"

Response: "Systemic racism" is not a term that I have used in my career as a prosecutor. The Merriam Webster Dictionary has defined it as the "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems."

29. How do you define "critical race theory?"

Response: "Critical race theory" is not a term that I have used in my career as a prosecutor. Black's Law Dictionary defines the term as a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

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

Response: Please see my responses to Questions 28 and 29.

31. In January or 2021, you were named as one of seven candidates "under active consideration" for appointment as U.S. Attorney for the District of New Jersey. Did you meet with, or speak to Senator Menendez between January and December 2021?

Response: Yes, in 2021, I had a single interview with Senator Menendez to be considered for appointment as U.S. Attorney for the District of New Jersey.

32. In 2021, did you discuss the prosecution of Mr. Fred Daibes with Senator Menendez? Did Senator Menendez attempt to influence you in one way or another regarding the Daibes matter?

Response: No, Senator Menendez did not raise or discuss the Daibes matter, or any other investigation or prosecution, when I interviewed for the U.S. Attorney position in 2021. Senator Menendez did not attempt to influence me during the interview.

33. You interviewed with Senator Menendez in consideration for this nomination on June 16, 2023. Did you discuss Mr. Daibes during that interview? Did you discuss Senator Menendez' personal involvement in that matter?

Response: No, Senator Menendez did not raise or discuss the Daibes matter, or any other investigation or prosecution, when I interviewed with him on June 16, 2023. Prior to recent public reporting, I had no knowledge of the Daibes matter.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Jamel Ken Semper, nominated to be United States District Judge for the District of New Jersey

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. For example, racial discrimination in the employment context is illegal under federal law pursuant to Title VII of the Civil Rights Act of 1964. In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141 (2023), the Supreme Court referred to prior racial discrimination as "ignoble history" before it held that that the Equal Protection Clause of the Fourteenth Amendment barred racial discrimination.

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 judicial nominee, I am subject to the Code of Conduct for United States Judges, and I cannot make public comment on cases which may come before me as it would violate the directives of Canon 3(A)(6). If I were confronted with such an issue, I would be duty bound to faithfully apply binding precedent. The Supreme Court's test for determining if the existence of a fundamental right is whether the right is an essential component of "ordered liberty" and whether the right is "deeply rooted" in America's history and tradition. *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228, 2242 (2022); *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: While I am not familiar with the specific philosophies of all the justices who served on those courts, if I am fortunate enough to be confirmed, my judicial philosophy will be to approach every matter with an open mind, thoroughly review the record in order to target the key legal issues, scrupulously review applicable statutes and binding precedents, and craft well-reasoned clear opinions that are invariably rooted in binding precedent.

4. **Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an "originalist"?**

Response: According to Black's Law Dictionary, "originalism" is the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." While I do not subscribe to a particular label, I am aware that the Supreme Court has repeatedly used this interpretative approach to resolve certain constitutional matters. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v City of Chicago*, 561 U.S. 742 (2010); *Crawford v. Washington*, 541 U.S. 36 (2004). If confirmed, I will unfailingly apply binding legal precedent in all matters that will come before me.

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?**

Response: According to Black's Law Dictionary, "living constitutionalism" is the "doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I do not subscribe to this doctrine. If confirmed, I will unfailingly apply binding legal precedent in all matters that will come before me.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: If I were confronted with an issue of first impression while serving on the district court, I would be duty bound to apply the interpretative method proscribed by the Supreme Court and the Third Circuit to address the constitutional issue before me. If binding interpretative framework required the application of original public meaning, I would be duty bound to follow it.

7. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: The Supreme Court has used original public meaning when interpreting provisions of the Constitution. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v City of Chicago*, 561 U.S. 742 (2010); *Crawford v. Washington*, 541 U.S. 36 (2004). While there are some examples when the Supreme Court used contemporary standards for questions related to the Eighth (*Atkins v. Virginia*, 536 U.S. 304, 311–12 (2002)) and First (*Miller v. California*, 413 U.S. 15, 24–25 (1973)) Amendments, the Supreme Court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County*, 140 S.Ct. 1731, 1738 (2020).

8. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: No. As Chief Justice Marshall said, the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." Moreover, the Supreme Court has affirmed the principle that the meaning of the constitutional provisions is "fixed" from the time of their ratification. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2132 (2022).

9. **Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?**

Response: Yes, the Supreme Court settled the issue, and its precedent is binding.

a. **Was it correctly decided?**

Response: If I am fortunate enough to be confirmed, I would unfailingly apply all binding precedent, including *Dobbs*. As a judicial nominee, I am subject to the Code of Conduct for United States Judges, and it would not be appropriate for me to opine on the merits of a Supreme Court opinion.

10. **Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: Yes, the Supreme Court settled the issue, and its precedent is binding.

a. **Was it correctly decided?**

Response: If I am fortunate enough to be confirmed, I would unfailingly apply all binding precedent, including *Bruen*. As a judicial nominee, I am subject to the Code of Conduct for United States Judges, and it would not be appropriate for me to opine on the merits of a Supreme Court opinion.

11. **Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?**

Response: Yes, the Supreme Court settled the issue, and its precedent is binding.

a. **Was it correctly decided?**

Response: Due to the highly unlikely occurrence that *de jure* segregation will be re-litigated in our courts again, I do not believe I am violating the Code of Conduct for United States Judges by answering this question. Yes, *Brown* was correctly decided.

12. **Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?**

Response: Yes, the Supreme Court settled the issue, and its precedent is binding.

a. **Was it correctly decided?**

Response: If I am fortunate enough to be confirmed, I would unfailingly apply all binding precedent, including *Students for Fair Admissions*. As a judicial nominee, I am subject to the Code of Conduct for United States Judges, and it would not be appropriate for me to opine on the merits of a Supreme Court opinion.

13. **Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: Yes, the Supreme Court settled the issue, and its precedent is binding.

a. **Was it correctly decided?**

Response: If I am fortunate enough to be confirmed, I would unfailingly apply all binding precedent, including *Gibbons*. As a judicial nominee, I am subject to the Code of Conduct for United States Judges, and it would not be appropriate for me to opine on the merits of a Supreme Court opinion.

14. **What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: Under 18 U.S.C. § 3142, there is a rebuttable presumption for pretrial detention for crimes of violence, a narcotics offense with a term of imprisonment of ten years or more, and an offense with a maximum punishment of life imprisonment or death.

a. **What are the policy rationales underlying such a presumption?**

Response: 18 U.S.C. § 3142 discusses the need to ensure a defendant's appearance for court proceeding and safety considerations for the community. As a federal prosecutor, I have seen matters when both factors were applicable. I cannot speak to the exact policy rationales of the drafters.

15. **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 on what government may impose on private institutions. In *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014), the Supreme Court held that under the Religious Freedom Restoration Act, a closely held corporation's owners can deny contraception health care coverage to employees based on religious objections after the government failed to show that the mandate was the least restrictive means of furthering a compelling interest. In *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), the Supreme Court held that public accommodation laws cannot be used to compel speech that offends one's religious beliefs. If I am fortunate enough to be confirmed, I will apply binding precedent to every matter that comes before me.

16. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: Religious discrimination is forbidden under our Constitution. The Supreme Court has repeatedly struck government regulations that lacked neutrality and were not generally applicable. *Carson v. Makin*, 142 S. Ct. 1987 (2021); *Espinoza v Montana*

Department of Revenue, 140 S. Ct. 2246 (2020). In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the Court applied strict scrutiny to a regulation that was deemed to treat secular activity more favorably than religious activity.

17. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: The Supreme Court held the applicants were entitled to injunctive relief because they were likely to succeed on the merits of the case because the New York Governor's Executive Order (Order) limiting attendance at religious services more than at secular activities, violated the Free Exercise Clause as a non-neutral restriction that was not narrowly tailored. The Order's disparate treatment of religious gatherings was not narrowly tailored to prevent the spread of COVID-19 because its restrictions were far more severe than had been shown to be required to prevent the spread of the virus at religious services. The Court found irreparable harm would result from this Free Exercise Clause violation, and New York could not show that granting relief would harm the public interest. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020).

18. **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), the Supreme Court enjoined COVID-19 restrictions that barred the plaintiffs from engaging in certain religious gatherings. The Court found the plaintiffs were likely to win on the merits because the regulation was not neutral and generally applicable considering the Court's finding that secular practices were treated more favorably than religious practices.

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

Response: Yes.

20. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.***

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court held that Colorado's Civil Rights Commission violated the Free Exercise Clause by treating religious objections with hostility while treating the objections of others more favorably. The Supreme Court found that Colorado's

Civil Rights Commission's did not comply with the Free Exercise Clause's requirement of religious neutrality because the Commission was hostile to the cakeshop owner's deep and sincere religious objections for not wanting to create cakes for same-sex couples. *Id.* at 1729. The Court also found that Colorado's Civil Rights Commission engaged in disparate treatment of the shop owner compared to other shop owners who had objected to making cakes with messages they deemed discriminatory. *Id.*

21. **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, the Supreme Court has held that sincerely held religious beliefs are protected. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014).

a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Yes, so long as the religious beliefs are sincerely held, they are subject to the constitutional protection of the Free Exercise Clause. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014).

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 am not aware of the Catholic Church's official positions.

22. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court applied the "Ministerial Exception" after finding the employees were hired under the agreement that their employment would be evaluated based upon their ability to develop and promote the Catholic faith in their community and teach religious instruction. The Court found that the First Amendment protects the internal governance decisions that touch on vital religious duties within religious institutions.

23. **In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide**

foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.

Response: The Supreme Court held Philadelphia's non-discrimination requirement that compelled Catholic Social Services (CSS) to certify same-sex couples as foster parents, violated the Free Exercise Clause of the First Amendment because the policy was not neutral and lacked general applicability. The Supreme Court found Philadelphia's refusal to contract with a state-licensed foster care agency affiliated with the Roman Catholic Archdiocese unless the agency agreed to certify same-sex couples as foster parents, burdened the agency's religious exercise protected by the First Amendment. The Court found that Philadelphia failed to act neutrally because it was intolerant of the religious beliefs and practices of CSS. The lack of neutrality triggered strict scrutiny, and the Court found Philadelphia's actions violated the Free Exercise Clause.

24. **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*, the Supreme Court struck down Montana's tuition assistance program because it barred families from using the awarded tuition funds on private religious schools. The Supreme Court found the "no aid" provision of the statute was not neutral because it excluded otherwise eligible schools based on their religious exercise, and the exclusion of religious schools from the program promoted stricter separation of church and state than the Federal Constitution required. *Carson v. Makin*, 142 S. Ct. 1987, 1997-1998 (2022). The Court also found that under the program, private schools were treated more favorably because they did not have to offer an education that was equivalent to that available in Maine public schools in order to be eligible for state funds. *Id.* The Court held the program violated the Free Exercise Clause of the First Amendment because it was not neutral and generally applicable. The Court stated that governments cannot exclude religious individuals from obtaining public benefits on the grounds that those benefits would be used for religious endeavors. *Id.* at 2002.

25. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy*, a high school football coach was fired after he knelt midfield after games and engaged in personal prayer. The Supreme Court held that the Free Exercise and Free Speech Clauses of the First Amendment protected his individual engagement in personal religious observance without government reprisal. The Court found that the coach's midfield prayer was private speech, unattributable to his professional duties, that was conducted outside the presence of his players. The Court determined that such private speech was not "government speech" attributable to the school district he served. *Kennedy v. Bremerton School District*, 142 S. Ct. 2407, 2424

(2022).

26. **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 stated the lower courts failed to give sufficient weight to the arguments for exemptions raised by other groups, and the government should give compelling reasons for denying such requests. Justice Gorsuch stated that courts cannot rely on broadly formulated governmental interests and must scrutinize the asserted harm of granting specific exemptions to religious claimants.

27. **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: In *Cox v. State of Louisiana*, 379 U.S. 559, 563 (1965), the Supreme Court upheld a Louisiana statute that tracked with 18 U.S.C. § 1507. The Supreme Court held that "picketing and parading—is subject to regulation even though intertwined with expression and association." *Id.* Pursuant to the Code of Conduct for United States Judges, it would be improper for me to offer my opinion of a statute. If I were fortunate enough to be confirmed, I would be duty bound to apply binding precedent from the Supreme Court and the Third Circuit.

28. **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.

29. **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.

30. **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.

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

Response: Political appointments are the province of the individual vested with the appointment authority. As a judicial nominee, I am bound by the Code of Conduct for United States Judges, and I cannot offer commentary on political decisions. If I were fortunate enough to be confirmed, I would be duty bound to apply binding precedent from the Supreme Court and the Third Circuit.

32. **If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?**

Response: In *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 533-534 (2015), the Supreme Court held that disparate-impact claims are identifiable under the Fair Housing Act and the Civil Rights Act of 1964. If a case involving a racially disparate outcome came before me, I would faithfully apply binding Supreme Court precedent.

33. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a judicial nominee, I am bound by the Code of Conduct for United States Judges, and I cannot opine on policy decisions. If confirmed, I would be duty bound to unfailingly apply binding precedent from the Supreme Court and the Third Circuit.

34. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No.

35. **What do you understand to be the original public meaning of the Second Amendment?**

Response: In *Heller* and *McDonald*, the Supreme Court held that the Second

Amendment protects the right of law-abiding citizens to possess a handgun in the home for self-defense. *District of Columbia v. Heller*, 554 U.S. 50 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010). In *Bruen* the Supreme Court held that the Second Amendment protects an individual's right to carry a handgun for self-defense outside the home. *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

36. **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: To justify a regulation of firearms under the Second Amendment, the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation. *New York State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111, 2126 (2022).

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

Response: The Supreme Court has held the Second Amendment is a fundamental right.

38. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: Per the Supreme Court, Second Amendment rights are not "second-class" rights. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

39. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: Per the Supreme Court, Second Amendment rights are not "second-class" rights. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

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

Response: Under U.S. Const. art. II, § 3, the executive must "take care that the laws be faithfully executed." Under the separation of powers, the Executive Branch possesses authority to decide how to prioritize and how aggressively to pursue legal actions against defendants who violate the law. *See United States v. Texas*, 599 U.S. 670 (2023).

41. **Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.**

Response: According to Black's Law Dictionary, "prosecutorial discretion" is 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." As for substantive administrative rule changes, any changes would need to comport with 5 U.S.C. §§ 551-559.

42. **Does the President have the authority to abolish the death penalty?**

Response: No, such an act would conflict with separation of powers principles. The federal death penalty is codified at 18 U.S.C. 3591. "There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." *Clinton v. City of New York*, 524 U.S. 417, 438 (1998).

43. **Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS.***

Response: In vacating the Centers for Disease Control's COVID-19 related moratorium on convictions, the Supreme Court held that agencies must have clear legislative authority when taking actions of such vast political and economic impact.

44. **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: No.

45. **In an article dated September 7, 2023, in the Hudson County View, Senator Menendez favorably spoke out in supporting you. Specifically, he stated that you were, "someone who I have gotten to know in my time as a member of the New Jersey Bar.**

a. **Given that you have only ever been a law clerk and a prosecutor, can you please explain what Senator Menendez meant?**

Response: I am not aware of this statement and the context in which it was given. I cannot offer any insight into its intended meaning. During my interview with Senator Menendez on June 16, 2023, he was familiar with my background as a violent crime prosecutor.

46. **In your United States Senate Committee on the Judiciary Questionnaire for Judicial Nominees, you stated that you "inadvertently" failed to register for Selective Service. Specifically, you indicated, "During an employment background check after turning 26, I learned that I was obligated to register for the Selective Service and that I had an unregistered status." Importantly, nowhere in your paragraph-long SJQ response did you indicate that you were exempt or otherwise not required to register for Selective Service.**

a. **Where were you applying when you discovered your unregistered status?**

Response: I was applying for an Assistant Prosecutor possession at the Essex County Prosecutor's Office when I learned about my status.

b. **When exactly did you discover your unregistered status?**

Response: I discovered my status in January of 2013.

c. **What steps did you take upon learning that you were unregistered?**

Response: I was 31 when I learned my status, and I inquired if I was able to register at that time. I then learned that I could not register because I was too old.

d. **Are you aware that knowingly and willingly failing to register for Selective Service is a felony?**

Response: I have dedicated my life to public service. I did not knowingly or willfully fail to register for Selective Service. Before I began my service to the country as a federal prosecutor in 2018, the Office of Personnel Management determined that my lack of registration was not knowing or willful.

47. **You also indicated that prior to employment at the U.S. Attorney's Office, the Office of Personnel Management adjudicated your lack of registration as neither knowing nor willful and determined that it was not an impediment of your ability to serve in the Department of Justice.**

a. **Did OPM provide written findings? If so, please provide them.**

Response: Yes, the Office of Personnel Management did provide me with written findings, and I have turned them over to the committee.

b. **What evidence did you provide OPM explaining that you did not know about Selective Service registration?**

Response: I provided OPM an explanation that I did not knowingly or willfully avoid registration.

48. **Also in your questionnaire, you indicated that you still carry approximately $10,000 in student debt. Given that you were born in 1981, graduated college in 2003, and graduated law school in 2007, it seems that you likely incurred this debt during a period in which you were required to register for Selective Service.**

a. **Have you ever received federal student aid, to include, but not limited to, loans and grants?**

Response: No. The $10,000 in student debt was accrued by my spouse before we met. I have never received federal student aid, loans, or grants.

b. **If so, did you complete a Free Application for Free Student Aid (FAFSA) form?**

Response: No, please see my response to Question 48(a).

c. **Prior to 2020, the FAFSA informed applicants that male students 18 to 25 years of age were required to register with the Selective Service in order to receive student aid. If an applicant had not already registered for Selective Service, they were given the option to check a box to register through their FAFSA form. How did you respond to this question on each of your FAFSA aid applications? Please provide a copy of each of your FAFSA applications.**

Response: I do not have FAFSA aid applications. I did not take out loans for school. Please see my response to Question 48(a) and (b).

d. **Have you <u>ever</u>, under penalty of perjury, completed, signed, or affirmed a federal form, indicating that you had registered for Selective Service when, in fact, you had not?**

Response: No.

Questions from Senator Thom Tillis
for Jamel Ken Semper, nominee to the U.S. District Court for the District of New Jersey

1. **Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

   Response: A judge's personal views are irrelevant and should play no role in interpreting and applying the law.

2. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: It is a requirement. The integrity of our legal system is rooted in the principle of the fair and impartial administration of justice. Judges are duty bound to be impartial.

3. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: I do not believe "judicial activism" is appropriate. Black's Law Dictionary defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents."

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: Judges are duty bound to interpret and apply the law without regard for a specific outcome.

6. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: To ensure the public's confidence in the protection of their rights, I will unfailingly apply binding precedent without reservation. If confirmed, I would be duty bound to apply binding precedent from the Supreme Court and the Third Circuit to ensure that all constitutional rights are protected. In the Second Amendment context, I would unfailingly apply the precedents of *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022).

7. **What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?**

Response: If confirmed, I would faithfully apply binding Supreme Court and the Third Circuit precedent to every matter, including qualified immunity matters. The Supreme Court has repeatedly stated that, "[q] ualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Taylor v. Barkes*, 575 U.S. 822, 825 (2015); citing *Reichle v. Howards,* 566 U.S. 658, 664 (2012). When applied properly, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Id.*

8. **Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?**

Response: As a judicial nominee, it is not appropriate for me to opine about the sufficiency of binding legal doctrines. If confirmed, I would be duty bound to apply binding Supreme Court and the Third Circuit precedent to every matter, including qualified immunity matters.

9. **What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: The scope of qualified immunity protections is a policy decision for lawmakers. As a judicial nominee, it is not appropriate for me to opine about the scope of qualified immunity. If confirmed, I would be duty bound to apply binding Supreme Court and the Third Circuit precedent to every matter, including qualified immunity matters.

10. **What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?**

Response: If confirmed, I would aim to ensure that all rights, including IP rights, are enforced in matters that may come before me. The Supreme Court has stated that under the Copyright and Patent Clause of Article I § 8 of the Constitution, Congress' copyright authority is tied to the progress of science, its patent authority, to the progress of the useful arts. *Golan v. Holder*, 565 U.S. 302, 325 (2012). If confirmed, I would apply all binding authority to the cases and controversies that may come before me.

11. **In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will**

hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"

Response: As a judicial nominee, it would be improper for me to opine about the litigation strategies of litigants. The District of New Jersey randomly assigns cases to its judges to eliminate the possibility of "judge shopping." If I were to face a matter involving a venue issue, I would carefully review governing precedent and apply it faithfully.

12. 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 shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?

Response: As a judicial nominee to a district court, I cannot opine on the Supreme Court's patent eligibility jurisprudence. If confirmed, I commit to unfailingly apply binding Supreme Court and Third Circuit precedent on all matters, including patents.

CHAIR
Hon. Ann Claire Williams (Ret.)
acwilliams@jonesday.com
(312) 269-1575

VICE CHAIR
David L. Brown
Dlbrown@hmrlawfirm.com
(515) 244-2141

FIRST CIRCUIT
Kay H. Hodge
khodge@scrmllp.com
(617) 542-6789

SECOND CIRCUIT
Dana M. Hrelic
dhrelic@pullcom.com
(860) 424-4382

THIRD CIRCUIT
G. Glennon Troublefield
gtroublefield@carellabyrne.com
(973) 994-1700

FOURTH CIRCUIT
Pamela J. Roberts
Pamela.Roberts@bowmanandbrooke.com
(803) 726-7420

FIFTH CIRCUIT
Michael D. Hunt
Michael.hunt@phelps.com
(225) 346-0285

SIXTH CIRCUIT
Khaliliah V. Spencer
kspencer@honigman.com
(313) 465-7654

SEVENTH CIRCUIT
Nigel F. Telman
ntelman@proskauer.com
(312) 962-3548

EIGHTH CIRCUIT
Sonia Miller-Van Oort
Soniamv@sapientialaw.com
(612) 756-7125

NINTH CIRCUIT
John C. Dwyer
dwyerjc@cooley.com
(650) 843-5228

Eric S. Casher
ecasher@meyersnave.com
(510) 808-2000

TENTH CIRCUIT
Jennifer H. Weddle
Weddlej@gtlaw.com
(303) 572-6500

ELEVENTH CIRCUIT
Suzanne E. Gilbert
Suzanne.Gilbert@hklaw.com
(407) 244-1142

D.C. CIRCUIT
Michael L. Huang
mhuang@tpmlaw.com
(734) 678-1531

FEDERAL CIRCUIT
Joseph Michael Drayton
Jdrayton@cooley.com
(212) 479-6000

SPECIAL ADVISORS
Peter Bennett
pbennett@thebennettlawfirm.com
(207) 831-9999

Vincent Chang
vchang@wmd-law.com
(212) 382-3300

Susan Saltzstein
Susan.Saltzstein@skadden.com
(212) 735-4132

STAFF COUNSEL
Denise A. Cardman
Denise.Cardman@Americanbar.org

AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
Hon. Ann Claire Williams (Ret.)
Jones Day
110 North Wacker Drive, Suite 4800
Chicago, Illinois 60606
acwilliams@jonesday.com

October 2, 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 Jamel K. Semper to the United States District Court for the District of New Jersey

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 Jamel K. Semper, who has been nominated by the President to the United States District Court for the District of New Jersey. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Mr. Semper is **"Well Qualified"** to serve on the United States District Court for the District of New Jersey. One committee member recused from voting due to a conflict.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee
on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Jamel K. Semper (*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*)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Micah William Janso Smith

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

   United States District Judge for the District of Hawaii

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
   District of Hawaii
   300 Ala Moana Boulevard, Suite 6-100
   Honolulu, Hawaii 96850

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

   1981; Mill Hall, Pennsylvania

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.

   2003 – 2006, Harvard Law School; J.D. (*magna cum laude*), 2006

   1999 – 2003, Lock Haven University of Pennsylvania; B.A. (*summa cum laude*), 2003

   2002, Universidad Nacional (Costa Rica); no degree conferred (semester abroad)

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

   2018 – present
   United States Attorney's Office

District of Hawaii
300 Ala Moana Boulevard, Suite 6-100
Honolulu, Hawaii 96850
Chief of Appeals and Legal Strategy (2022 – present)
Criminal Civil Rights Coordinator (2021 – present)
Deputy Chief of Criminal Division (2019 – present)
Project Safe Neighborhoods Coordinator (2019)
Co-Chief of Violent Crime and Drug Section (2018 – 2019)
Assistant United States Attorney, Criminal Division (2018 – present)

Fall 2020
University of Hawaii at Manoa, William S. Richardson School of Law
2515 Dole Street
Honolulu, Hawaii 96822-2350
Lecturer in Law

2012 – 2018
United States Attorney's Office
Southern District of New York
1 Saint Andrew's Plaza
New York, New York 10007
Co-Chief of Violent and Organized Crime Unit (2017 – 2018)
Member of Department of Justice Human Source Review Committee (2017 – 2018)
DNA Liaison (2017 – 2018)
Deputy Chief of Violent and Organized Crime Unit (2016 – 2017)
Acting Deputy Chief of Appeals (2016 – 2017)
Assistant United States Attorney, Criminal Division (2012 – 2018)

Fall 2017
Columbia Law School
435 West 116th Street
New York, New York 10027
Lecturer in Law

2008 – 2012
O'Melveny & Myers LLP
1625 I Street, Northwest
Washington, DC 20006
Counsel (2010 – 2012)
Associate (2008 – 2010)

2007 – 2008
Supreme Court of the United States
One First Street, Northwest
Washington, DC 20543
Law Clerk for the Honorable David Hackett Souter

June 2007
Akin Gump Strauss Hauer & Feld LLP
2001 K Street, Northwest
Washington, DC 20006
Summer Law Clerk

2006 – 2007
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007
Law Clerk for the Honorable Guido Calabresi

Fall 2005
Professor Richard H. Fallon, Jr.
Harvard College
86 Brattle Street
Cambridge, Massachusetts 02138
Teaching Fellow

Summer 2005
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Summer Associate

2004 – 2005
Professor Charles J. Ogletree, Jr.
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant

Summer 2004
Centro Ecuatoriano de Derecho Ambiental (Ecuadorian Center for Environmental Law)
Avenida Eloy Alfaro N32-650 y Rusia, 3er Piso
Quito, Ecuador
Summer Research (Legal) Intern

Summer 2004
Legal Aid Society of Hawaii, Kauai Office
3016 Umi Street, Suite 220
Lihue, Hawaii 96766
Summer Law Clerk

Summer 2003
Kauai High School
3577 Lala Road
Lihue, Hawaii 96766
Summer School Teacher

Other Affiliations (Uncompensated)

2019 – present
Hawaii Justice Foundation
P.O. Box 4750
Honolulu, Hawaii 96812
Board Member

2020 – present
African American Lawyers Association of Hawaii
Board Member (2022 – present)
Vice President (2021 – 2022)

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.

Top Cop Award, Top Cop Hawaii (2022)

United States Department of Justice, Organized Crime Drug Enforcement Task Forces, Director's Award, Outstanding Investigation (2022)

Hawaii High Intensity Drug Trafficking Areas 2021 Case of the Year Award

Hawaii High Intensity Drug Trafficking Areas 2019 Case of the Year Award

United States Attorney General's Award for Distinguished Service (2019)

United States Attorney General's David Margolis Award for Exceptional Service (2017)

Homeland Security Investigations New York Prosecutor of the Year (2017)

Federal Law Enforcement Foundation Federal Prosecutor Award (2017)

Financial Crimes Enforcement Network Award, Transnational Organized Crime Category (2016)

Executive Office for the United States, Director's Award for Superior Performance by a Litigative Team (2014)

United States Assistant Attorney General's Award for Exceptional Service (2014)

Harvard Law School
Magna cum laude (2006)
Honors passes in First Year Lawyering program
Harvard Law Review, Notes Editor
1L Section Social Committee (Section Representative)

Lock Haven University of Pennsylvania
Summa cum laude (2003)
Honors Program (1999 – 2003)
Honors Program Freshman Discussion Group Leader (2000 – 2001)
Phi Kappa Phi Honor Society (2003)
Forensics Speech and Debate Club (various competition awards) (2002 – 2003)
Scholar Athlete, Track and Field (1999 – 2001)

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

African American Lawyers Association of Hawaii (2020 – present)
Board Member (2022 – present)
Vice President (2021 – 2022)

Hawaii State Bar Association, Committee on the Delivery of Legal Services to the Public (2019 – present)
Chair (2021 – present)
Committee Member (2019 – present)

New York City Bar Association (2015 – present)

United States District Court Judicial Conference, District of Hawaii (2020 – 2023 term)
Lawyer Delegate

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, 2009
New York, 2018

There have been no lapses in membership.

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

United States Court of Appeals for the Second Circuit, 2010
United States Court of Appeals for the Ninth Circuit, 2010
United States Court of Appeals for the District of Columbia Circuit, 2010
United States Court of Appeals for the Federal Circuit, 2009
United States District Court for the District of Columbia, 2010
United States District Court for the District of Hawaii, 2018

I have allowed my memberships in the United States Court of Appeals for the Second Circuit and the United States District Court for the District of Columbia to become inactive because, for the last several years, I have not had to appear in those courts. All other memberships remain active with no lapses.

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.

With Babak Siavoshy, *The Fourth Amendment's Future*, ACSblog (Jan. 24, 2012). Copy supplied.

Popular Metadoctrinalism: The Next Frontier?, 1 Harv. L. & Pol'y Rev. 507 (2007). Copy supplied.

The Fourth Amendment and Antidilution: Confronting the Overlooked Function of the Consent Search Doctrine, 119 Harv. L. Rev. 2187 (May 2006). Copy supplied.

Recent Case, United States v. Scott, 119 Harv. L. Rev. 1630 (Mar. 2006). Copy supplied.

Today's Argument in Merrill Lynch v. Dabit, SCOTUSBlog (Jan. 18, 2006). Copy supplied.

Recent Case, Ford Motor Co. v. Todecheene, 118 Harv. L. Rev. 2469 (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.

As an associate at O'Melveny & Myers LLP, I assisted with the drafting of an expert legal opinion on (i) the Foreign Corrupt Practices Act, and (ii) New York state law on the voiding of contracts as against public policy, which was submitted in a court proceeding in Hong Kong. I do not recall the name of the proceeding and do not have a copy of the opinion.

As an associate at O'Melveny & Myers LLP, I also assisted with the drafting of a comment submitted to the National Mediation Board by the Air Transport

Association and the Airline Industrial Relations Conference, in response to a notice of proposed rulemaking. 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.

The list below reflects my best efforts to identify the speeches or talks that I have delivered. To compile the list, I consulted my own records and internet sources. There may, however, be other speeches or talks that I have been unable to recall or identify, as I may have spoken briefly at events for which I was not able to locate any record.

October 7, 2022: Speaker, Hawaii State Bar Association Leadership Institute, Honolulu, Hawaii. I made brief remarks about the Hawaii State Bar Association's Committee on the Delivery of Legal Services to the Public, and encouraged the audience to consider joining the committee and volunteering to provide pro bono legal assistance to individuals in need. I have no notes, transcript, or recording. The address for the Hawaii State Bar Association Leadership Institute is Alakea Corporate Tower, 1100 Alakea Street, Suite 1000, Honolulu, Hawaii 96813.

September 16, 2022: Panelist, Sealing and Unsealing: Practice Tips and Pitfalls, United States District Court Conference Panel, District of Hawaii, Honolulu, Hawaii. Remarks supplied.

August 23, 2020: Guest Speaker, The PFBL Scholarship Fund, Inc., Virtual Award Ceremony, New York, New York. Video available at http://thepfblscholarshipfund.com/videos (starting at 6:20).

January 2019 (specific date unknown): Co-Instructor, Closing Arguments, Hawaii Federal Trial Academy, Honolulu, Hawaii. Copy of prepared text supplied.

May 9 and 10, 2014: Commencement Speaker, Lock Haven University of Pennsylvania. Speech and press coverage supplied.

In addition, over the past 11 years as an Assistant United States Attorney, I have occasionally spoken to groups of students, law clerks, and others visiting the United States Attorney's Office or the United States District Court (both in the District of Hawaii and the Southern District of New York). I do not have records of these talks, but they have focused generally on my career path and on the work

of a federal prosecutor.

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.

Hawaii State Bar Association E-Newsletter, Diversity Equality and Inclusion Member Spotlight (Oct. 15, 2022). Copy supplied.

On June 6, 2022, I briefly participated in a press conference in which the United States Attorney's Office for the District of Hawaii, the FBI, and the Maui Police Department announced arrests in a federal criminal case. Recording available at https://youtu.be/7a9i1xUY2ik (starting at 16:46).

Tom LaVenture, *Micah Smith wins big in court*, Garden Island Newspaper (Jan. 24, 2012). Copy supplied.

Tom LaVenture, *Kauai grad takes case to U.S. Supreme Court*, Garden Island Newspaper (Nov. 15, 2011). Copy supplied.

Christina Shuman, *Alumni Profile: A Most Supreme Honor*, Lock Haven University of Pennsylvania, Perspective Magazine (Spring 2009). Copy supplied.

Duane Shimogawa, *Where are they now?*, Garden Island Newspaper (July 8, 2004). Copy supplied.

In the spring of 2002, while I was studying abroad in Heredia, Costa Rica, I made a brief appearance on a Spanish-language radio show, where, as best I can recall more than 20 years later, I said hello to my host family and spoke briefly about the experience of studying abroad. The show was not recorded, as far as I am aware, and I do not have any records of it.

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.

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 2006 to 2007, I served as a law clerk for the Honorable Guido Calabresi of the United States Court of Appeals for the Second Circuit.

From 2007 to 2008, I served as a law clerk for the Honorable David Hackett Souter of the Supreme Court of the United States.

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

I have not practiced law alone.

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

June 2007
Akin Gump Strauss Hauer & Feld LLP
2001 K Street, Northwest
Washington, DC 20006
Summer Law Clerk

2008 – 2012
O'Melveny & Myers LLP
1625 I Street, Northwest
Washington, DC 20006
Counsel (2010 – 2012)
Associate (2008 – 2010)

2012 – 2018
United States Attorney's Office
Southern District of New York
1 Saint Andrew's Plaza
New York, New York 10007
Co-Chief of Violent and Organized Crime Unit (2017 – 2018)
Member of Department of Justice Human Source Review Committee (2017 – 2018)
DNA Liaison (2017 – 2018)
Deputy Chief of Violent and Organized Crime Unit (2016 – 2017)
Acting Deputy Chief of Appeals (2016 – 2017)
Assistant United States Attorney, Criminal Division (2012 – 2018)

2018 – present
United States Attorney's Office
District of Hawaii
300 Ala Moana Boulevard, Suite 6-100
Honolulu, Hawaii 96850
Chief of Appeals and Legal Strategy (2022 – present)
Criminal Civil Rights Coordinator (2021 – present)
Deputy Chief of Criminal Division (2019 – present)
Project Safe Neighborhoods Coordinator (2019)
Co-Chief of Violent Crime and Drug Section (2018 – 2019)
Assistant United States Attorney, Criminal Division (2018 – 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 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 my clerkships at the United States Court of Appeals for the Second Circuit and the Supreme Court of the United States, I joined O'Melveny & Myers LLP (O'Melveny) as an associate in the appellate litigation group. During my tenure as an associate and later counsel at O'Melveny, I principally advised clients and litigation teams on legal issues, and drafted motions and briefs both in trial courts and on appeal. These motions and briefs involved, among other things, evidentiary disputes, disputes over jury instructions, federal preemption, ERISA, intellectual property, securities fraud, labor law, product liability, and the False Claims Act. I co-authored briefs filed in the Supreme Court of the United States. I assisted with the drafting of an expert report on the Foreign Corrupt Practices Act (FCPA), and separately worked on a white-collar criminal defense matter involving the FCPA. I also maintained a robust pro bono practice (which included representing the D.C. Public Charter School Board in administrative proceedings, in trial court litigation, and on appeal), and served as a mentor for summer associates and more junior associates. On multiple occasions, I served as a moot court judge at Georgetown Law's Supreme Court Institute. And I presented oral argument before the D.C. Circuit and D.C. Court of Appeals.

In 2012, I began my service as an Assistant United States Attorney in the Criminal Division of the Southern District of New York. Between 2012 and 2016, I worked as a line prosecutor, overseeing investigations, prosecuting criminal cases, trying cases before juries, and handling oral argument before the United States Court of Appeals for the Second Circuit. I prosecuted cases involving, among other things, racketeering, murder-for-hire, drug trafficking, firearm-related offenses, wire and bank fraud, violations of sanctions laws, tax fraud, money laundering, criminal copyright infringement, interstate transportation of stolen property, and aggravated identity theft. I also assisted with civil forfeiture matters. Beginning in August 2016 and continuing until February 2017, I served as Acting Deputy Chief of Appeals, reviewing and editing appellate briefs

and providing legal advice to other prosecutors. Beginning in December 2016 and continuing through September 2018, I supervised approximately 20 line prosecutors in the Violent and Organized Crime Unit, which handles, among other things, racketeering, murder, organized crime, and sex trafficking matters (first as Deputy Chief and then as Co-Chief of that Unit). This supervisory position involved, among other things, supervising investigations, criminal prosecutions, and trials handled by line prosecutors. I also served as a mentor for more junior prosecutors in the office, and in that capacity, second chaired evidentiary hearings and trials handled by more junior prosecutors.

In 2018, I began my service as an Assistant United States Attorney in the Criminal Division of the District of Hawaii. I have served in a variety of supervisory roles, and I have also handled my own cases. I have worked on criminal cases involving, among other things, public corruption, money laundering, racketeering, murder, operation of illegal gambling businesses, drug trafficking, and firearm-related offenses. In my role as Deputy Chief of the Criminal Division, I supervise investigations, criminal prosecutions, and trials handled by line prosecutors. In my role as Criminal Civil Rights Coordinator, I coordinate with the Civil Rights Division, other prosecutors in my office, and law enforcement agencies to ensure that potential civil rights violations are properly investigated and handled. And since 2022, I have served as the office's Chief of Appeals and Legal Strategy, in which role I provide legal advice to other prosecutors in the office, and also review and edit appellate briefs from both the Criminal and Civil Divisions of the office.

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

At O'Melveny, my clients were most often corporations involved in civil litigation, both in trial court and on appeal. I specialized in handling legal issues arising out of complex civil litigation in state and federal court. At the United States Attorney's Office in the District of Hawaii and the Southern District of New York, my focus has principally been criminal litigation in federal court, both in district court and in the court of appeals.

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

While at O'Melveny (2008 – 2012), my practice was focused primarily on complex civil litigation. Although I drafted numerous motions and briefs in courts across the country, I did not appear in court often.

While serving as an Assistant United States Attorney in the District of Hawaii and

the Southern District of New York (2012 – present), I have appeared regularly in federal district court, which I estimate to be typically at least once or twice a month. Although I have worked on a limited number of civil litigation matters, my practice has focused largely on criminal litigation.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 9%
   3. other courts: 0%
   4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 15%
   2. criminal proceedings: 85%

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 participated in ten cases that proceeded to verdict or decision (nine in the Southern District of New York, and one in the Court of Common Pleas, Philadelphia County, Pennsylvania). All were jury trials. I was co-lead counsel in six of these trials (in the Southern District of New York), meaning that I delivered at least one jury address and called government witnesses. I was co-counsel in two of these trials (in the Southern District of New York), in which role I provided guidance to the less experienced prosecutors principally assigned to handle the matters but did not deliver jury addresses or call witnesses myself. And in two of these trials, my role was limited to drafting motions and briefs.

I have argued at least ten appeals (at least eight in the Second Circuit, one in the D.C. Circuit, and one in the D.C. Court of Appeals), and have conducted numerous arguments in federal trial court (both in the Southern District of New York and in the District of Hawaii).

I represented the D.C. Public Charter School Board in administrative proceedings, civil litigation in the D.C. Superior Court, and on appeal in the D.C. Court of Appeals; during the course of this representation, I conducted argument both in the D.C. Superior Court and in the D.C. Court of Appeals. I also represented an individual before an Administrative Law Judge in an appeal from the denial of social security benefits.

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.

While at O'Melveny, I participated as counsel for parties and amici at the certiorari stage and at the merits stage.

Merits Stage Briefing

United States v. Jones, No. 10-1259, Brief for Respondent, 2011 WL 4479076 (U.S. Sept. 26, 2011).

Board of Trustees of the Leland Stanford Junior University v. Roche Molecular Systems, Inc. et al., No. 09-1159, Brief of the National Venture Capital Association as Amicus Curiae in Support of Petitioner, 2010 WL 5385331 (U.S. Dec. 23, 2010).

Certiorari Stage Briefing

Hynix Semiconductor Inc. et al. *v. Rambus Inc.*, No. 11-549, Petition for a Writ of Certiorari, 2011 WL 5128964 (U.S. Oct. 27, 2011); Reply Brief for Petitioners, 2012 WL 105552 (U.S. Jan. 12, 2012).

United States v. Jones, No. 10-1259, Brief in Opposition, 2011 WL 2263361 (U.S. June 7, 2011).

In addition, while a student at Harvard Law School, as part of my course work in the Supreme Court Litigation Workshop, Winter Term 2006, I assisted with the drafting of portions of the merits stage brief in *Randall et al. v. Sorrell et al.*, Nos 04-1528, 04-1530, 04-1697, Brief for Respondent, Cross-Petitioners Vermont Public Interest Research Group et al., 2006 WL 325190 (U.S. Feb. 8, 2006).

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. Puahi*, No. 21-cr-00088 (D. Haw. 2019 – 2022) (Judge J. Michael Seabright)

Mr. Puahi pleaded guilty to multiple counts of cyberstalking, but disputed that he had, as part of that conduct, threatened the use of a firearm or set fire to a building owned by cyberstalking victims. An evidentiary hearing was held in advance of sentencing to resolve these factual disputes. The government called two witnesses. The defense called three witnesses, including the defendant and a fire investigator who had been retained as an expert by the defense. The district court found that the defendant did threaten the use of a firearm, which increased Mr. Puahi's advisory guideline range. The district court further found that although the government did not prove that the defendant had caused the building fire by clear and convincing evidence, it had proved that fact by a preponderance of the evidence. As a consequence, the district court did not consider Mr. Puahi's involvement in the building fire when calculating the advisory guideline range, but took it into consideration in determining the appropriate sentence. The district court ultimately sentenced Mr. Puahi to 60 months' imprisonment.

I was co-lead counsel on this case, and was responsible for the investigation, charges, and evidentiary hearing. At the evidentiary hearing, I called the government witnesses, cross-examined the defendant and the fire investigator, and delivered arguments for the government at the close of the evidence.

Co-Counsel
Sara D. Ayabe
United States Attorney's Office for the District of Hawaii
300 Ala Moana Boulevard, Suite 6-100
Honolulu, HI 96850
(808) 541-2850

Counsel for Defendant
Andrew M. Kennedy
Schlueter, Kwiat & Kennedy LLLP
75-167 Kalani Street, Suite 201
Kailua-Kona, HI 96740
(808) 987-7275

2. *United States v. Siatunuu*, No. 19-cr-00119 (D. Haw. 2019 – 2021) (Judge J. Michael Seabright)

Mr. Siatunuu pleaded guilty to participating in the operation of an illegal gambling business. He admitted that he had worked as security at the business, and further admitted that while working in that role, he had assaulted a patron of the business. But the patron had also reported that Siatunuu had a firearm during the assault, that he had assaulted the patron because the patron had refused to share his winnings with Siatunuu,

and that he suspected Siatunuu had taken the winnings after the assault. Siatunuu disputed these additional facts and an evidentiary hearing was held in advance of sentencing to resolve these factual disputes. At the hearing, the government called the patron, as well as the patron's treating physician and another lay witness who corroborated the patron's testimony. Siatunuu testified on his own behalf. The district court ultimately found that Siatunuu did possess a firearm, and that the assault was the result of the patron's refusal to share his winnings, but also found that there was insufficient evidence that Siatunuu had taken the winnings after the assault. The district court sentenced Siatunuu to 21 months' imprisonment.

I was co-lead counsel on this case, and was responsible for the investigation, charges, and evidentiary hearing. At the evidentiary hearing, I called two of the government's witnesses, cross-examined the defendant, and delivered arguments for the government at the close of the evidence.

Co-Counsel
Sara D. Ayabe
United States Attorney's Office for the District of Hawaii
300 Ala Moana Boulevard, Suite 6-100
Honolulu, HI 96850
(808) 541-2850

Counsel for Defendant
Honorable Shanlyn A.S. Park
Hawaii State Judiciary, First Circuit Court
777 Punchbowl Street
Honolulu, HI 96813
(808) 539-4767

3. *United States v. Aguilar*, No. 22-00033 (D. Haw. 2021 – 2022) (Judge Jill A. Otake)

Mr. Aguilar was serving as an instructor for the Junior Reserve Officers' Training Corps at a high school on Kauai, Hawaii, when he sexually exploited one of his students. Aguilar used, persuaded, or induced the minor victim to engage in sexually explicit conduct for the purpose of producing visual depictions of the minor victim. Aguilar eventually pleaded guilty, and the district court sentenced him to 168 months' imprisonment, to be followed by ten years of supervised release, along with a $10,000 assessment under the Justice for Victims of Trafficking Act.

I was the co-lead counsel on this case, and was responsible for the investigation, charges, and sentencing in this case. Among other things, I coordinated with the Kauai County Prosecuting Attorney's Office and the Kauai Police Department and helped to ensure that federal criminal charges were promptly brought and did not interfere with a parallel state prosecution; handled two separate detention hearings before a U.S. Magistrate Judge (one on the government's motion to detain and a second on Aguilar's motion for reconsideration); and represented the government at the sentencing hearing, which

involved extensive argument about, among other things, aggravating and mitigating circumstances in the case.

Co-Counsel
Morgan L. Early (formerly with the United States Attorney's Office)
Deputy Attorney General
Department of the Attorney General, State of Hawaii
425 Queen Street
Honolulu, HI 96813
(808) 586-1500

Counsel for Defendant
Alen Matsuo Kaione Kaneshiro
Law Office of Alen Kaneshiro
841 Bishop Street, Suite 2201
Honolulu, HI 96813
(808) 521-7720

Other Counsel
Keola Siu
Office of the Prosecuting Attorney, County of Kauai
4444 Rice Street
Lihue, HI 96766
(808) 241-1888

4. *United States v. Muir*, No. 15-cr-00078 (S.D.N.Y. 2015 – 2018) (Judge Richard M. Berman), *aff'd*, 710 F. App'x 510 (2d Cir. Feb. 9, 2018)

Mr. Muir was charged with conspiring to distribute "crack" cocaine in the Bronx – specifically, by serving as armed "muscle" for other drug distributors – and with possessing a firearm in furtherance of his drug trafficking offense. Muir also was charged with conspiring to possess firearms after having sustained a felony conviction, two substantive counts of unlawfully possessing firearms, and one count of unlawfully possessing ammunition.

After a one-week trial, a jury returned a verdict of guilty on four counts and not guilty on two. In particular, the jury found Muir guilty of conspiring to distribute "crack" cocaine (but found Muir culpable for a lower drug weight than the indictment had alleged), of possessing a firearm in furtherance of that conspiracy, of conspiring to unlawfully possess firearms, and of one substantive count of unlawful possession. The jury found Muir not guilty of the second substantive count of unlawful possession of a firearm, as well as of the charged unlawful possession of ammunition. The district court sentenced Muir principally to 200 months' imprisonment. On direct appeal, the United States Court of Appeals for the Second Circuit affirmed Muir's conviction and sentence.

I was co-lead counsel on this case, and was responsible for the investigation, charges, and

trial. I delivered the opening statement and rebuttal argument, and called many of the government's witnesses, including a cell site location expert from FBI, a ballistics expert from NYPD, and three cooperating witnesses.

Co-Counsel
Robert W. Allen (formerly with the United States Attorney's Office)
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
(212) 390-4060

Counsel for Defendant
Karloff C. Commissiong
Adams & Commissiong LLP
65 Broadway, Suite 715
New York, NY 10006
(212) 430-6590

5. *United States v. Ventura*, No. 09-cr-1015 (S.D.N.Y. 2015 – 2016) (Judge John G. Koeltl), *aff'd*, 673 F. App'x 81 (2d Cir. Dec. 15, 2016)

Mr. Ventura was charged with ordering the murder of his nephew, Mr. Garrido, who had sought to encroach on Ventura's supposed drug turf. Ventura's hitmen entered Garrido's apartment building in August 1996 to carry out his order. One of the hitmen cornered Garrido in an elevator lobby and fired a gunshot into his head and killed him. Garrido was with a friend who sought to escape, but the hitman shot and killed him as well.

After a trial lasting approximately two and a half weeks, a jury returned a verdict of guilty against Ventura. The district court sentenced Ventura principally to life imprisonment. On direct appeal, the United States Court of Appeals for the Second Circuit affirmed Ventura's conviction and sentence.

I was co-lead counsel on this trial. I delivered the closing argument and called several government witnesses, including cooperating witnesses. I also was the principal author of the government's brief on direct appeal, and delivered oral argument on behalf of the government in the United States Court of Appeals for the Second Circuit.

Co-Counsel
Margaret M. Garnett
United States Attorney's Office for the Southern District of New York
1 Saint Andrew's Plaza
New York, NY 10007
(212) 637-2200

Counsel for Defendant
Nathaniel Edward Burney

Quadrino & Schwartz, P.C.
666 Old Country Road
Garden City, NY 11530
(516) 745-1122

6. *United States v. Lopez-Cabrera et al.*, No. 11-cr-1032 (S.D.N.Y. 2013 – 2018) (Judge Paul A. Engelmayer), 2015 WL 3880503 (S.D.N.Y. June 23, 2015), *aff'd*, 933 F.3d 95 (2d Cir. 2019)

Mr. Lopez-Cabrera, Mr. Lopez, and Mr. Beltran were charged with participating in the affairs of a racketeering enterprise known as the Trinitarios Gang, including through the commission of murder, attempted murder, and drug trafficking. The case involved several murder charges. Lopez-Cabrera and Beltran were charged with the March 2009 murder of an individual who was shot and killed in retaliation for an earlier altercation with Trinitarios Gang members. Lopez-Cabrera was charged with the September 2009 felony murder of another individual, who was shot and killed when Lopez-Cabrera and other gang members sought to rob him. Lopez and Lopez-Cabrera were charged with the March 2010 murders of two other individuals, who were shot and killed as they ran away from attacking members of the Trinitarios Gang. Finally, Lopez was charged with the November 2010 murder of a fifth individual, who was shot and killed in the lobby of an apartment building.

After a 12-week trial, a jury returned verdicts of guilty against all three defendants. The district court then sentenced each defendant principally to life imprisonment. By separate order, the district court rejected the defendants' argument that they could not be constitutionally sentenced to life imprisonment because they were between the ages of 18 and 22 when they committed or participated in the charged murders. On direct appeal, the United States Court of Appeals for the Second Circuit affirmed the defendants' convictions and sentences.

I was co-lead counsel on this trial. I delivered a closing argument and called several government witnesses, including three cooperating witnesses. I also was the principal author of the government's brief in the district court on the constitutionality of life sentences for the defendants, as well as of the government's brief on direct appeal. I did not deliver oral argument on behalf of the government on appeal because I had transferred to the United States Attorney's Office for the District of Hawaii before the oral argument took place.

Co-Counsel
Jessica Ortiz (formerly with the United States Attorney's Office)
Port Authority NY NJ, Office of Inspector General
5 Marine View Plaza, Suite 502
Hoboken, NJ 07030
(973) 565-4340

Rachel Maimin (formerly with the United States Attorney's Office)

Lowenstein Sandler LLP
1251 Avenue of the Americas, 17th Floor
New York, NY 10020
(212) 419-5876

Counsel for Defendants
Carl J. Herman (for defendant Lopez-Cabrera)
443 Northfield Avenue
West Orange, NJ 07052
(973) 324-1011

Irving Cohen (for defendant Lopez-Cabrera)
230 West 79th Street, Suite Grb
New York, NY 10024
(212) 964-2544

Ezra Spilke (for defendant Lopez)
Law Offices of Ezra Spilke, PLLC
1825 Foster Avenue, Suite 1K
Brooklyn, NY 11230
(718) 783-3682

Susan Gail Kellman (for defendant Lopez)
Law Offices of Susan G. Kellman
25 Eighth Avenue
Brooklyn, NY 11217
(718) 783-8200

Lee Alan Ginsberg (for defendant Beltran)
Freeman Nooter & Ginsberg
75 Maiden Lane, Suite 503
New York, NY 10038
(212) 608-0808

7. *United States v. Urena et al.*, No. 11-cr-1032 (S.D.N.Y. 2013 – 2018) (Judge Paul A. Engelmayer), 73 F. Supp. 3d 291 (S.D.N.Y. 2014), 2016 WL 4223745 (S.D.N.Y. Aug. 8, 2016), *aff'd*, 694 F. App'x 829 (2d Cir. May 31, 2017)

Mr. Urena and Mr. Vasquez were charged with participating in the affairs of the Trinitarios Gang, and with committing a variety of crimes in furtherance of that enterprise, including murder, attempted murder, and drug trafficking. These crimes included the September 2005 murder of Mr. Phillips, who was shot and stabbed to death in Yonkers, New York.

After a seven-week trial, the jury returned a verdict of guilty on all charges against Urena and on most charges against Vasquez, including finding Urena guilty of the murder of

Phillips and Vasquez guilty for conspiring to murder Phillips. The jury found Vasquez not guilty of the substantive murder charge. The district court denied the defendants' post-trial motions for judgment of acquittal or new trial, with the exception of one charged racketeering act (for which the district court concluded that there was sufficient evidence of assault but not of attempted murder under New York State law). The district court sentenced Urena principally to life imprisonment and sentenced Vasquez principally to 180 months' imprisonment.

After sentencing, Urena filed a motion under 28 U.S.C. § 2255, to vacate his conviction and sentence on the basis of an alleged *Brady* violation. The district court denied the motion.

On direct appeal, the United States Court of Appeals for the Second Circuit affirmed the defendants' convictions and sentences and also affirmed the denial of Urena's Section 2255 motion.

I was co-lead counsel on this trial. I delivered the opening statement and called several government witnesses, including two cooperating witnesses, and cross-examined a defense witness. I also was the principal author of (1) the government's post-trial brief in opposition to the defendants' post-trial motions for judgment of acquittal or new trial; (2) the government's post-trial brief in opposition to Urena's Section 2255 motion; and (3) the government's brief on direct appeal. I delivered oral argument on behalf of the government in the United States Court of Appeals for the Second Circuit.

Co-Counsel
Ryan P. Poscablo (formerly with the United States Attorney's Office)
Steptoe & Johnson LLP
1114 Avenue of the Americas
New York, NY 10036
(212) 506-3921

Timothy D. Sini (formerly with the United States Attorney's Office)
Nixon Peabody
55 West 46th Street
New York, NY 10036
(516) 832-7655

Counsel for Defendants
Gregory E. Cooper (for defendant Urena)
20 Vesey Street, Suite 400
New York, NY 10007
(212) 608-4828

Don D. Buchwald (for defendant Vasquez)
Law Offices of Don Buchwald
2 Meadowbrook Road

White Plains, NY 10605
(212) 661-0040

8. *United States v. Pena et al.*, No. 09-cr-00341 (S.D.N.Y. 2012 – 2013) (Judge Victor Marrero), 978 F. Supp. 2d 254 (S.D.N.Y. 2013), 932 F. Supp. 2d 464 (S.D.N.Y. 2013), *aff'd*, 642 F. App'x 40 (2d Cir. Mar. 15, 2016)

Mr. Pena and Mr. Raymond Pena were charged with having acted as hitmen for hire, and in particular with one murder in May 1997, and a double murder in June 1997. The first victim's body had been found dumped on the side of a highway with a garbage bag over his head; the bodies of the later victims had been found in a burning vehicle off the side of another highway. The murders had remained unsolved until the federal investigation.

In advance of trial, the district court resolved a variety of evidentiary issues. The district court also denied Raymond Pena's motion for severance. After a three-week trial, a jury returned verdicts of guilty against both defendants. The district court then sentenced both defendants principally to life imprisonment. On direct appeal, the United States Court of Appeals for the Second Circuit affirmed the defendants' convictions and sentences.

I was co-lead counsel on this trial. I delivered the opening statement and called several government witnesses, including a cooperating witness. I also assisted with drafting the government's brief on appeal, but did not deliver oral argument.

Co-Counsel
Laurie A. Korenbaum (formerly with the United States Attorney's Office)
Suffolk County District Attorney's Office
725 Veterans Highway
Smithtown, NY 11787
(646) 589-1839

Timothy D. Sini (formerly with the United States Attorney's Office)
Nixon Peabody
55 West 46th Street
New York, NY 10036
(516) 832-7655

Counsel for Defendants
Ronald L. Garnett (for defendant Pena)
Law Offices of Ronald L. Garnett
299 Broadway, Suite 1802
New York, NY 10007
(212) 587-3867

Deveraux L. Cannick (for defendant Raymond Pena)
Aiello & Cannick
69-06 Grand Avenue

Maspeth, NY 11378
(718) 426-0444

Calvin H. Scholar (for defendant Raymond Pena)
The C.H. Scholar Law Firm
270 North Avenue, Suite 202
New Rochelle, NY 10801
(914) 813-8989

9. *United States v. Reese*, No. 12-cr-00629 (S.D.N.Y. 2012 – 2018) (Judge Victor Marrero), *aff'd*, 603 F. App'x 63 (May 13, 2015)

Mr. Reese was charged with participating in a fraud scheme that victimized numerous companies and individuals. Reese stole and altered checks, and then arranged to have them deposited into bank accounts he could control. For example, Reese tricked a high school student into depositing an altered check, withdrawing proceeds, and providing the cash to Reese. When the bank flagged the transaction, Reese stopped returning the student's text messages and calls, and the student's family was left on the hook. Reese also stole the identity of another victim, and then used that stolen identity to create an online payment account that he attempted to use to negotiate another stolen check.

After a five-day trial, a jury returned a verdict of guilty. The district court sentenced Reese principally to 108 months' imprisonment. On direct appeal, the United States Court of Appeals for the Second Circuit affirmed Reese's conviction and sentence.

I was co-lead counsel on this case, and was responsible for the investigation, charges, and trial. I delivered the opening statement and closing argument, cross-examined Reese, and called most government witnesses. I also was the principal author of the government's brief on direct appeal, and delivered oral argument on behalf of the government in the United States Court of Appeals for the Second Circuit.

Co-Counsel
Jessica Ortiz (formerly with the United States Attorney's Office)
Port Authority NY NJ, Office of Inspector General
5 Marine View Plaza, Suite 502
Hoboken, NJ 07030
(973) 565-4340

Counsel for Defendant
Ronald L. Garnett
Law Offices of Ronald L. Garnett
299 Broadway, Suite 1802
New York, NY 10007
(212) 587-3867

10. *KIMA v. DC Public Charter School Board*, Nos. 11-cv-710, 11-cv-742 (D.C. Sup. Ct.

2010 – 2012) (Judge Michael L. Rankin), *aff'd*, 55 A.3d 894 (D.C. Ct. of App. Nov. 15, 2012)

The case involved a challenge to the D.C. Public Charter School Board's decision to revoke the charter of a failing school. The case was significant because, to my knowledge, this was the first legal challenge to the scope of the Board's statutory revocation authority.

O'Melveny provided pro bono representation to the Board, and in that capacity, I assisted the Board during its administrative proceedings, including by reviewing and providing advice on its written administrative decision and helping to compile its administrative record. After the lawsuit was filed, I was the principal author of multiple iterations of briefing in the D.C. Superior Court, and then handled the bulk of oral argument before that court, arguing that the Board's decision was not arbitrary or capricious. After the trial court upheld the Board's decision, I represented the Board on appeal to the D.C. Court of Appeals, both by principally authoring the appellate brief and by handling oral argument. The appeals court ultimately affirmed the trial court's decision.

Co-Counsel
Brian C. Anderson
Courtney B. Dyer
O'Melveny & Myers LLP
1625 I Street, Northwest
Washington, DC 20006
(202) 383-5309 (Anderson)
(202) 383-5215 (Dyer)

Opposing Counsel
Gene Schaerr
Schaerr Jaffe LLP
1717 K Street, Northwest, Suite 900
Washington, DC 20006
(202) 787-1060

Charles B. Molster, III
The Law Offices of Charles B. Molster, III PLLC
2141 Wisconsin Avenue, Northwest
Washington, DC 20007
(202) 787-1312

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

by the attorney-client privilege.)

In addition to the above litigated matters, I have been actively involved in dozens of cases in federal court that have been resolved prior to trial.

As an Assistant United States Attorney in the District of Hawaii, I have worked on, together with other Assistant United States Attorneys, among other things, (i) criminal prosecutions of a member of the Hawaii State Senate, a member of the Hawaii State House of Representatives, a county-level agency head, and other defendants as part of an investigation into bribery and other public corruption charges; all charged defendants pleaded guilty; (ii) the criminal prosecution of a sitting county councilmember who was running a drug trafficking organization, as well as eleven of his co-conspirators; all defendants pleaded guilty; and (iii) the criminal prosecution of 13 individuals charged with participating in a racketeering conspiracy that is alleged to have involved murder, kidnapping, chemical weapon attacks, robbery, assaults, fraud, and other conduct; the case remains pending as to six defendants.

As an Assistant United States Attorney in the Southern District of New York, I worked on, together with other Assistant United States Attorneys, among other things, (i) a civil forfeiture complaint against a hedge fund based on allegations of insider trading and money laundering; the defendant firm resolved the matter through a guilty plea to criminal charges and a settlement of the complaint, which included an agreement to pay $1.8 billion in financial penalties; (ii) a criminal prosecution of a global financial institution on charges of violations of U.S. sanctions laws and money laundering; the institution pleaded guilty and agreed to total financial penalties in excess of $8.9 billion; and (iii) a civil forfeiture complaint using 18 U.S.C. § 981(k) to seize funds at U.S. banks held in the name of foreign banks controlled by an individual alleged to have sold proliferation-sensitive goods to sanctioned entities; approximately $6,895,000 was seized.

In addition to working on cases myself, I also spend a significant amount of time advising other Assistant United States Attorneys and law enforcement personnel on legal and strategy issues. Among the issues that commonly arise are criminal procedure issues, questions of evidence law, and investigative strategy. I also meet with victims of crimes to explain to them the criminal justice system, what they can expect in the course of the court process, and what my role is.

Additionally, since 2021, I have served as the Chair of the Hawaii State Bar Association's Committee on the Delivery of Legal Services to the Public, which promotes programs designed to make legal services more readily available in the community.

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

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe

briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

In Fall 2020, I taught a course at the University of Hawaii at Manoa, William S. Richardson School of Law on Federal Prosecution. The purpose of the course was to teach students about how the federal criminal system works. The students performed mock jury addresses, bail arguments, and sentencing arguments. Syllabus supplied.

In the Fall of 2017, I co-taught a seminar at the Columbia Law School on Federal Prosecution. The purpose of the course was to teach students about how the federal criminal system works. In addition to attending classes, the students worked as externs in the United States Attorney's Office for the Southern District of New York. Syllabus supplied.

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

    None.

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

    None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    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 would, pursuant to 28 U.S.C. § 455(b)(3), recuse myself from cases in which the United States Attorney's Office appears as a party and in which I "participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion regarding the merits of the particular case in controversy." I would also follow the policies of the district court, and all other rules regarding 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 rely on 28 U.S.C. §455(b)(3), Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances, including the policies of the district court. I would also employ any conflict-screening process utilized by the court.

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.

Most of my professional career has been in government service. As a law clerk between 2006 and 2008 and a government attorney from 2012 to the present, I have been restricted from performing *pro bono* legal work for clients.

Nonetheless, I have served the public and the disadvantaged in other ways. I am a member of the board of the Hawaii Justice Foundation, a grantmaking organization that serves as a vehicle for philanthropic law-related projects in the State of Hawaii. I am also the chair of HSBA's Committee on the Delivery of Legal Services to the Public, which promotes programs designed to make legal services more readily available in the community. And from 2019 until the COVID-19 pandemic ended in-person meetings in 2020, I participated as a volunteer mentor for the Lawakua Kajukenbo Club, for which I (and other colleagues from the U.S. Attorney's Office for the District of Hawaii) would meet with high school students at a public housing development to provide mentoring.

Between 2008 and 2012, when I was an associate and then counsel at O'Melveny & Myers LLP, I had a robust pro bono practice. Among other things, I represented the D.C. Public Charter School Board in administrative proceedings, in trial court litigation, and on appeal; represented an individual in Social Security Administration proceedings, including at a hearing before an administrative law judge; and presented oral argument before the D.C. Circuit as court-appointed amicus counsel in support of an individual in an appeal from the denial of Social Security disability benefits, which resulted in a

published opinion ruling in favor of the appellant, *Jones v. Astrue*, 650 F.3d 772 (D.C. Cir. 2011). I also served, on multiple occasions, as a moot court judge at Georgetown Law's Supreme Court Institute.

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 15, 2023, U.S. Senators Brian Schatz and Mazie K. Hirono announced the formation of a Federal Judicial Selection Commission, comprised of three members, to make recommendations on candidates to fill potential vacancies on the U.S. District Court for the District of Hawaii. I applied and was interviewed by the Commission on April 26, 2023. I then interviewed with Senator Schatz on May 22, 2023, and with Senator Hirono on May 23, 2023. On June 22, 2023, I was contacted by the Office of the White House Counsel to schedule an interview. On June 23, 2023, 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 August 30, 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. Micah W. J. Smith Nominee to the United States District Court for the District of Hawaii

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 strongly disagree with this statement. All judges are bound, under Article VI, to support the Constitution; they may not substitute their own independent value judgments for those of the Constitution. In addition, district judges are required to apply binding Supreme Court and Circuit precedent to the particular cases before them.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's response was: "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

   Response: I strongly disagree with this statement. A lower-court federal judge is duty-bound to apply binding Supreme Court precedent. It would not be consistent with that duty to attempt to evade or circumvent binding Supreme Court precedent.

3. **In a concurrence in the denial of rehearing en banc in *Al–Bihani v. Obama* then-Judge Kavanaugh wrote: "international-law norms are not domestic U.S. law in the absence of action by the political branches to codify those norms." Is this a correct statement of law?**

   Response: Yes, it is a correct statement of law. *See Medellin v. Texas*, 552 U.S. 491, 504-505 (2008) (recognizing that "not all international law obligations automatically constitute binding federal law enforceable in United States courts," and that "while treaties may comprise international commitments . . . they are not domestic law unless Congress has either enacted implementing statements or the treaty itself conveys an intention that it be self-executing and is ratified on those terms") (citation and internal quotation marks omitted).

4. **In your essay *Popular Metadoctrinalism: The Next Frontier* you wrote "[m]ost constitutional words and phrases have a clear meaning only at such a high level of generality that . . . their meaning alone cannot decide concrete cases."**

   a) Do you still hold this view?

   Response: No. In the sixteen years since I wrote the essay quoted above, I have practiced as a litigator, including as a federal prosecutor for the last eleven years, and

have frequently argued that the meaning of the Constitution may be discerned by faithfully following Supreme Court and relevant Circuit precedent and applying recognized tools of interpretation to the Constitution's words and phrases. As a result of this practical experience, I no longer hold the view that most constitutional words and phrases cannot decide concrete cases. In addition, I recognize that even in those cases where the words and phrases of the Constitution alone cannot decide concrete cases, the historical background of those words and phrases can provide sufficient clarity about their meaning. *See, e.g.*, *Crawford v. Washington*, 124 S. Ct. 1354, 1359 (2004) (recognizing that the "Constitution's text does not alone resolve this case" and that "[w]e must therefore turn to the historical background of the [Confrontation] Clause to understand its meaning"); *Giles v. California*, 128 S. Ct. 2678, 2682-86 (2008) (considering the right of confrontation at common law to determine whether the Confrontation Clause embraced the theory of forfeiture by wrongdoing).

b) Do you hold the same view regarding statutory interpretation?

Response: No. In the sixteen years since I wrote the essay quoted above, I have practiced as a litigator, including as a federal prosecutor for the last eleven years, and have frequently argued that the meaning of a statute may be discerned by following Supreme Court and relevant Circuit precedent and applying recognized tools of interpretation. In light of that practical experience, I hold the view that statutes can be interpreted by interpreting their text, applying recognized tools of interpretation, and faithfully following Supreme Court and relevant Circuit precedent.

Please describe the relevant law governing when a federal court may entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court.

Response: A person in custody pursuant to a judgment of a State court may petition for a writ of habeas corpus if they contend that their custody is "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). In considering such a petition, a federal district court must proceed with the recognition that "[g]ranting habeas relief to a state prisoner intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority." *Brown v. Davenport*, 142 S. Ct. 1510, 1523 (2022) (citation and internal quotation marks omitted). A federal district court must apply the Supreme Court's "precedents governing [and imposing constraints on] the appropriate exercise of equitable discretion," *id.* at 1524, and, in addition, must apply the statutory conditions to relief that Congress enacted in 28 U.S.C. § 2254. Among those statutory conditions are (1) a requirement that a state inmate exhaust available state remedies or demonstrate that they are insufficient or unavailable; (2) a requirement that the state inmate demonstrate that the state court's ruling was either contrary to or an unreasonable application of clearly established federal law as determined by the Supreme Court, or based on an unreasonable determination of the facts presented in the state-court proceeding (which the inmate must demonstrate by clear and convincing evidence); and

(3) a strict one-year time limit for filing a petition in federal court.

5. **Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.**

Response: A prisoner in custody under sentence of a federal court may file a motion to vacate, set aside, or correct a federal sentence when the motion alleges that (1) the sentence was imposed in violation of the Constitution or federal law; (2) the court was without jurisdiction to impose the sentence; or (3) the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack. 28 U.S.C. § 2255. In applying Section 2255, federal district courts must proceed with the recognition that the "United States has an interest in the finality of sentences imposed by its own courts" and that "how to balance that interest against error correction is a judgment about the proper scope of the writ that is normally for Congress to make." *Jones v. Hendrix*, 599 U.S. 465, 491 (2023) (citations, internal quotation marks, and alterations omitted). Among the judgments Congress made in Section 2255 are (1) that Section 2255 motions should be filed with the sentencing court, rather than with the court where the inmate is detained; (2) that second or successive Section 2255 motions should be strictly limited to claims based either on newly discovered evidence that would have resulted in an acquittal, or on a new and previously unavailable rule of constitutional law made retroactive by the Supreme Court; and (3) that Section 2255 motions must be filed within a strict one-year time limit. Apart from Section 2255, Congress has granted federal district courts limited authority to modify terms of imprisonment under sentence of a federal court under 18 U.S.C. § 3582(c).

6. **Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.**

Response: Both the University of North Carolina and Harvard College used race as a factor in making student admission decisions. The Supreme Court first held that the plaintiff, Students for Fair Admissions, had organizational standing to sue on behalf of its members. It then turned to the merits of the case and applied strict scrutiny to the universities' race-based admissions policies. Concluding that the policies did not survive strict scrutiny, the Court held that they were unconstitutional under the Fourteenth Amendment's Equal Protection Clause, which applied directly to the University of North Carolina (as a State institution) and which applied through Title VI of the Civil Rights Act of 1964 to Harvard College (as a private institution that received federal funds).

7. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?**

If yes, please list each job or role where you participated in hiring decisions.

Response: Yes. As a law clerk to Judge Guido Calabresi and Justice David

Souter between 2006 and 2008, I participated in the initial screening of law clerk applications. As an associate (2008 to 2010) and then counsel (2010 to 2012) at O'Melveny & Myers LLP, I participated in interviews of candidates for associate positions. I might also have interviewed candidates for summer associate positions at O'Melveny, but cannot recall with certainty. Finally, during my service at the U.S. Attorney's Offices in the Southern District of New York (2012 to 2018) and the District of Hawaii (2018 to present), I have on multiple occasions participated in interviews of candidates for employment as Assistant U.S. Attorneys.

8. **Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

   Response: No.

9. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

   Response: No.

10. **Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

    Response: No, not to my knowledge.

    If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

11. **Under current Supreme Court and Ninth Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?**

    Response: Yes. Both the Supreme Court and the Ninth Circuit apply strict scrutiny to government classifications on the basis of race. *See Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 720 (2007) ("It is well established that when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny."); *Mitchell v. Washington*, 818 F.3d 436, 444 (9th Cir. 2016) (observing that "the Supreme Court has insisted on strict scrutiny in every context, even for so-called benign racial classifications" (citation and internal quotation marks omitted)).

12. **Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

Response: Colorado threatened to compel a wedding website designer to create websites conveying messages inconsistent with her belief that marriage should be reserved to unions between one man and one woman. The Supreme Court held that the First Amendment's free speech guarantee (incorporated against States through the Fourteenth Amendment's Due Process Clause) prohibited Colorado from compelling the wedding website designer to "speak as the State demands or face sanctions for expressing her own beliefs . . . ." *303 Creative LLC v. Elenis*, 600 U.S. 570, 589 (2023).

13. **In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."**

Is this a correct statement of the law?

Response: Yes. This passage from *Barnette* has been quoted favorably in recent decisions of the Supreme Court. *See, e.g.*, *303 Creative LLC v. Elenis*, 600 U.S. 570, 584-85 (2023); *Janus v. AFSCME*, 138 S. Ct. 2448, 2463 (2018). It is binding precedent, and if fortunate to be confirmed, I would apply it where relevant to the cases before me.

14. **How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?**

Response: The Supreme Court has explained that content-neutral regulations are those that are justified without reference to the content of the regulated speech. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011). By contrast, government regulation of speech is content based if it "target[s] speech based on its communicative content . . . ." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). A regulation is facially content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Id.* at 164. Moreover, laws that are "facially content neutral" will be "considered content-based regulations of speech" if they "cannot be justified without reference to the content of the regulated speech" or they "were adopted by the government because of agreement with the message the speech conveys." *Id.* (citation, internal quotation marks, and alteration omitted).

The Supreme Court has identified various key questions that must inform any analysis of this issue—including in *Reed* and, more recently, in *City of Austin, Texas v. Reagan Nat'l*

Advertising of Austin, LLC, 596 U.S. 61 (2022)—and if fortunate to be confirmed, I would faithfully apply these precedents, as well as binding Ninth Circuit precedent. Among other things, I would be mindful of the Supreme Court's admonition that while some "facial distinctions based on a message are obvious, defining speech by particular subject matter, others are more subtle, defining regulated speech by its function or purpose." *Id.*

15. **What is the standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: The Supreme Court recently provided guidance on this question in *Counterman v. Colorado*, 600 U.S. 66 (2023). As the Court there explained, true threats are "serious expressions conveying that a speaker means to commit an act of unlawful violence." *Id.* at 74 (citation, internal quotation marks, and alteration omitted). Before a speaker can be held liable for communicating a true threat, there must be a showing of recklessness—that is, a showing that the speaker was "aware that others could regard his statements as threatening violence and deliver[ed] them anyway." *Id.* at 79 (citation and internal quotation marks omitted).

16. **Under Supreme Court and Ninth Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: The Supreme Court has acknowledged that "the appropriate methodology for distinguishing questions of fact from questions of law has been, to say the least, elusive." *Miller v. Fenton*, 474 U.S. 104, 113 (1985). In the context of 28 U.S.C. § 2254 petitions, the Supreme Court has spoken of issues of fact as "basic, primary, or historical facts: facts in the sense of a recital of external events and the credibility of their narrators . . . ." *Thompson v. Keohane*, 516 U.S. 99, 109-110 (1995) (citation and internal quotation marks omitted). By contrast, the Supreme Court has identified the voluntariness of a confession, the effectiveness of counsel's assistance, and the potential conflict of interest arising out of an attorney's representation of multiple defendants as issues of law for Section 2254 purposes. *Id.* at 111.

The sources that courts may consider in deciding whether an issue is a question of fact or question of law may depend on the context in which the issue arises (e.g., whether it arises in the Section 2254 context or another context). For example, in considering what standard of review to apply on appeal, the Ninth Circuit has described an "essentially factual finding" as "one requiring an inquiry that is founded on the application of the fact-finding tribunal's experience with the mainsprings of human conduct." *United States v. Franklin*, 18 F.4th 1105, 1115 (9th Cir. 2021) (citation, internal quotation marks, and alterations omitted). By contrast, the Ninth Circuit has defined as "essentially legal questions" those that "require us to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles." *Id.* (citation, internal quotation marks, and alterations omitted). If fortunate to be confirmed, I would

carefully research Supreme Court and Ninth Circuit precedent on this issue and faithfully apply binding precedent.

17. **Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: Congress has required federal sentencing judges to consider each of the above-listed purposes in making a sentencing decision under 18 U.S.C. § 3553(a), but Congress has not ranked or weighed those purposes as a categorical matter. Instead, as the Supreme Court has explained, "after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district court should then consider *all* of the § 3553(a) factors to determine whether they support the sentence requested by a party." *Gall v. United States*, 552 U.S. 38, 49-50 (2007) (emphasis added). In considering all of the Section 3553(a) factors, a sentencing court should consider how those factors bear on the individualized facts of the case at hand. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) ("The district court must make an individualized determination based on the facts."). If fortunate to be confirmed, I would faithfully apply binding Supreme Court and Ninth Circuit precedent in making any sentencing decisions.

18. **Please identify a Supreme Court decision from the last 50 years that you think is particularly well reasoned and explain why.**

Response: As nominee for a lower federal court, it is generally inappropriate for me to comment on the correctness or quality of reasoning of Supreme Court precedents. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If fortunate to be confirmed, I would be duty-bound to apply all binding Supreme Court and Ninth Circuit precedent.

19. **Please identify a Ninth Circuit judicial opinion from the last 50 years that you think is particularly well reasoned and explain why.**

Response: As a nominee for a lower federal court, it is generally inappropriate for me to comment on the correctness or quality of reasoning of Ninth Circuit precedents. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If fortunate to be confirmed, I would be duty-bound to apply all binding Supreme Court and Ninth Circuit precedent.

20. **Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: 18 U.S.C. § 1507 makes it a crime for any person "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." Penalties for violating Section

1507 include a fine and a term of imprisonment of not more than one year.

21. **Is 18 U.S.C. § 1507 constitutional?**

Response: I am aware that a state statute "modeled after" Section 1507 was held to be facially constitutional in *Cox v. Louisiana*, 379 U.S. 559, 561 (1965). But as a judicial nominee, it would not be appropriate for me to opine on the constitutionality of Section 1507, because matters pertaining to this statute could come before me or another court. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If fortunate to be confirmed, I would carefully consider the facts of any case raising this issue and faithfully apply binding Supreme Court and Ninth Circuit precedent.

22. **Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: The Constitution is a domestic document, ratified by the People of the United States. Foreign law does not govern its interpretation. The Supreme Court has recognized, however, that English historical materials may sometimes shed light on the original public meaning of the Constitution's provisions. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (studying English historical materials and concluding that by "the time of the founding, the right to have arms had become fundamental for English subjects"). If fortunate to be confirmed, I would faithfully apply binding Supreme Court and Ninth Circuit precedent.

23. **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?**
l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**
m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response to subparts a and b: Because it is highly unlikely that litigation over *de*

jure racial segregation of public elementary schools or government prohibition of interracial marriage will arise in my lifetime, it is appropriate for me to say that I believe *Brown* and *Loving* were correctly decided.

Response to subparts c through m: The remaining cases address issues that are being litigated in federal court or that could be in the foreseeable future. For that reason, as a judicial nominee, it would not be appropriate for me to comment on the correctness of those cases. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If fortunate to be confirmed, I would be duty-bound to apply all binding Supreme Court and Ninth Circuit precedent. *Roe* and *Casey* are not among those binding precedents, because they were expressly overruled by *Dobbs*.

24. **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 legal standard set forth in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). There, the Supreme Court explained that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects the conduct and the government bears the burden of justifying its regulation by "demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2129-2130. In *Bruen*, *Heller*, and *McDonald*, the Court has held that the Second Amendment's plain text and original public meaning protect an individual right to keep arms at home and carry arms in public for self-defense, that this right is not limited to those participating in militia service, and that this right restricts both the federal government (through the Second Amendment) and the States (through the Fourteenth Amendment). Accordingly, the government would bear the burden of justifying, in the manner *Bruen* describes, any regulation or statutory provision that infringes on this individual right.

25. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**

a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

26. **The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**

a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No, not to my knowledge.

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, not to my knowledge.

c. **Have you ever been in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No, not to my knowledge.

27. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

28. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**

a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No, not to my knowledge.

b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No, not to my knowledge.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No, not to my knowledge.

29. **Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**

a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

30. **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 15, 2023, Senator Brian Schatz and Senator Mazie K. Hirono announced the formation of a Federal Judicial Selection Commission, comprised of three members, to make recommendations on candidates to fill potential vacancies on the U.S. District Court for the District of Hawaii. I submitted an application to the Commission and was then invited to sit for an interview. I was interviewed by the Commission on April 26, 2023. Following that interview, I was invited to interview with Senator Schatz and Senator Hirono. Those interviews took place on May 22, 2023, and May 23, 2023. On June 22, 2023, the White House Counsel's Office contacted me to schedule an interview. I was interviewed by staff from the White House Counsel's Office on June 23, 2023. Since that time, I have been in contact with staff from the White House Counsel's Office and Justice Department staff working with the Office of Legal Policy about the nomination and confirmation process. On August 30, 2023, the President announced his intent to nominate me.

31. **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, not to my knowledge.

32. **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, not to my knowledge.

33. **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, not to my knowledge.

34. **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, not to my knowledge.

35. **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, not to my knowledge.

36. **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?**

Response: No.

a. **If yes,**
   i. **Who?**
   ii. **What advice did they give?**
   iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

37. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: On June 22, 2023, I was contacted by the White House Counsel's Office to schedule an interview, and on June 23, 2023, I was interviewed by staff from that office. Since that time, I have communicated on numerous occasions with staff from the White House Counsel's Office and Justice Department staff working with the Justice Department's Office of Legal Policy about the nomination and confirmation process.

38. **Please explain, with particularity, the process whereby you answered these questions.**

Response: The Office of Legal Policy provided me these questions on October 11, 2023. I drafted responses to the questions, submitted these draft responses to the Office of Legal Policy, and received comments on the draft responses. I reviewed the comments and made the revisions that I believed were appropriate. I then submitted my final draft

to the Office of Legal Policy for submission to the Committee.

Senate Judiciary Committee
Nominations Hearing
October 4, 2023
Questions for the Record
Senator Amy Klobuchar

Micah W.J. Smith, to be U.S. District Court Judge for the District of Hawaii
For over a decade you have served as an Assistant U.S. Attorney, first in the Southern District of New York, and then in the District of Hawaii. In the District of Hawaii you have served as the Co-Chief of the Violent Crime and Drug Section and as the Chief of Appeals and Legal Strategy. You have been awarded the Attorney General's Award for Exceptional Service twice, and have also been praised for your investigative skills by the Justice Department.

- **In your view, what aspects of your record, performance, and demeanor has earned you the respect of your colleagues and from leaders of the law enforcement community throughout your career?**

  Response: It has been an incredible privilege to serve as an Assistant U.S. Attorney for the last eleven years. I have worked alongside dedicated public servants who care deeply about protecting their communities from violence, drug trafficking, and other threats. To the best of my ability, I have tried in my own work to live up to these high standards.

  In my work as a prosecutor, I have remained mindful of the sacrifices that law enforcement officers make, as well as the challenges witnesses and victims face. I make sure to thank and acknowledge witnesses and victims for their willingness to come forward with information, as well as law enforcement officers whose dedication makes it possible for justice to be done. I also recognize how important it is for a prosecutor to get things right, and I therefore am always sensitive to the possibility that my current understanding of available evidence might be superseded by further information as an investigation continues. It has been my solemn responsibility to carefully assess the evidence, to never rush to any conclusions, and to follow the facts wherever they lead. It is my hope that my work over the last eleven years has done honor to the important position of public service that I have been privileged to hold.

- **How will your experience as a career prosecutor inform your approach to interpreting and applying the law?**

  Response: I recognize that if fortunate to be confirmed, I would no longer be an advocate but instead must be an impartial arbiter of the facts and law. I believe my experience as a career prosecutor would aid me as in making this transition in at least three significant ways. First, over the last eleven years, I have had a substantial amount of experience speaking with victims of crimes and helping them to understand the legal process and their rights. I have regularly met with victims and witnesses from a wide array of backgrounds and life experiences. If fortunate to be confirmed, I believe these experiences would help me ensure that victims and other witnesses are treated fairly and with respect in my courtroom. This will, in turn, ensure that I have the best, most

accurate record possible to which to apply the law in an evenhanded and faithful manner. Second, as a federal prosecutor, my client has been the United States, and my overriding obligation has been to see that justice is done. In carrying out this responsibility, I have strived to keep an open mind during investigations, to see the evidence objectively and with clear eyes, and to reach firm conclusions only after having had the full opportunity to carefully assess the facts and the law. I believe that my experience with handling matters in this careful, open-minded way would inform my approach as a judge, where it would be my duty to approach cases with a careful, open mind. Third, beginning in 2016, I have been privileged to serve in various supervisory capacities, which has given me valuable managerial experience and has also given me a broader perspective on how to ensure that a public institution carries out its mission justly. These supervisory experiences would also benefit me and inform my work as a judge.

Senator Mike Lee
Questions for the Record
Micah W.J. Smith, Nominee to the United States District Court for the District of Hawaii

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

Response: I have served as a federal prosecutor for the last eleven years, principally litigating matters in trial court, and my judicial philosophy would be informed by that practical experience. I would try to be the kind of district judge that I always want to appear before: one who approaches each case with an open mind, treats all attorneys and litigants with respect and patience, prepares diligently, listens carefully to the arguments of the parties, thoroughly researches and faithfully applies all binding Supreme Court and Ninth Circuit precedent, and then explains the bases for his or her decision in a clear and respectful manner.

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

Response: If a case turned on the interpretation of a federal statute, I would begin by looking to any binding Supreme Court or Ninth Circuit precedent interpreting that statute and would faithfully apply any such precedent. If the Supreme Court and Ninth Circuit have not yet interpreted the relevant text, I would follow Supreme Court and Ninth Circuit guidance on what interpretive methods should be used. Supreme Court precedent instructs a court to begin with the statute's text, analyzing the original public meaning of its words in context. I would also consider the structure of the statute, recognizing that a statute should, where possible, be interpreted in a manner that gives effect to all of its provisions. *See, e.g.*, *Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1939 (2022). And I would consider whether the major questions doctrine, or any other such doctrine, requires a clear statement or clear congressional authorization before the statute may be interpreted in a particular manner. *See, e.g.*, *Biden v. Nebraska*, 143 S. Ct. 2355, 2375 (2023). If the text of the statute reveals an unambiguous meaning after applying the tools of statutory interpretation, I would apply that meaning. Where the statute's text does not provide an unambiguous meaning, I would apply any relevant canons of construction and consult any persuasive, non-binding authority from other Circuits or district courts. In addition, to the extent consistent with Supreme Court or Ninth Circuit precedent, I would consult the legislative history of the statute. *See, e.g.*, *Bostock v. Clayton County*, 140 S. Ct. 1731, 1750 (2020) (recognizing that the understandings of the law's drafters may sometimes help to "ferret out shifts in linguistic usage or subtle distinctions between literal and ordinary meaning").

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

Response: If a case turned on the interpretation of a constitutional provision, I would begin by looking to any binding Supreme Court or Ninth Circuit precedent interpreting that text and would faithfully apply any such precedent. If the Supreme

Court and Ninth Circuit have not yet interpreted the relevant text, I would follow Supreme Court or Ninth Circuit guidance on what interpretive methods should be used. In many contexts, the Supreme Court has instructed lower courts to apply the original public meaning of a constitutional provision, informed by history and tradition. *See, e.g.*, *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2127 (2022) (explaining that *Heller* began with a textual analysis focused on the normal and ordinary meaning of the Second Amendment, and then assessed whether its initial conclusion was confirmed by the historical background of the Second Amendment); *Crawford v. Washington*, 124 S. Ct. 1354, 1359 (2004) (recognizing that the "Constitution's text does not alone resolve this case" and that "[w]e must therefore turn to the historical background of the [Confrontation] Clause to understand its meaning"). In other contexts, the Supreme Court has employed other types of interpretive methods. *See, e.g.*, *Maryland v. Shatzer*, 130 S. Ct. 1213, 1223 (2010) (adopting a 14-day break-in-custody rule on the ground that confessions "obtained after a 2-week break in custody and a waiver of *Miranda* rights are most unlikely to be compelled"). If fortunate to be confirmed, I would be duty-bound as a lower court judge to apply the approach dictated by binding Supreme Court and Ninth Circuit precedent.

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, above. If confirmed, I would faithfully apply all binding Supreme Court and Ninth Circuit precedent, including as to the interpretive method that should be used.

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, above.

6. **Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: The plain meaning of a statute or constitutional provision refers to the public understanding of the relevant language at the time of enactment. Although the meaning of a text does not change as social norms and linguistic conventions evolve, the Supreme Court has explained that the plain meaning of a text might nonetheless apply to situations beyond those contemplated by the drafters. *See, e.g.*, *Bostock v. Clayton County*, 140 S. Ct. 1731, 1737 (2020) (explaining that "the limits of the drafters' imagination supply no reason to ignore the law's demands"); *Bruen*, 142 S. Ct. at 2132 (explaining that "even though the Second Amendment's definition of 'arms' is fixed according to its historical understanding, that general definition covers modern instruments that facilitate armed self-defense"). If fortunate to be confirmed, I would faithfully apply all binding Supreme Court and the Ninth Circuit precedent,

including as to the interpretive method that should be used.

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

Response: The constitutional requirements for Article III standing—the "irreducible constitutional minimum"—are an injury-in-fact, causation, and redressability. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). The Supreme Court has explained that to establish an injury in fact, "a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* at 1548 (citation and internal quotation marks omitted). To establish causation, a plaintiff must demonstrate "a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citation, internal quotation marks, and alterations omitted). Finally, to establish redressability, the plaintiff must show that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 561.

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

Response: The Constitution creates a federal government of limited, enumerated powers. Congress therefore does not have implied powers beyond those enumerated in the Constitution. One of the enumerated powers of Congress, however, is the Necessary and Proper Clause of Article I, Section 8. That Clause authorizes Congress to "make all laws which shall be necessary and proper for carrying into execution" the powers enumerated in the Constitution. The Supreme Court has recognized that "[a]lthough the Clause gives Congress authority to legislate on that vast mass of incidental powers which must be involved in the constitution, it does not license the exercise of any great substantive and independent powers beyond those specifically enumerated." *NFIB v. Sebelius*, 132 S. Ct. 2566, 2591 (2012) (citation, internal quotation marks, and alterations omitted).

9. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: Under Supreme Court precedent, Congress is not required to refer to a specific Constitutional enumerated power. *See NFIB*, 132 S. Ct. at 2598 ("The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.") (citation and internal quotation marks omitted). If fortunate to be confirmed, I would evaluate the constitutionality of a law by faithfully applying all binding Supreme Court and Ninth Circuit precedent.

10. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: As the Supreme Court explained in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Due Process Clause of the Fourteenth Amendment "has been held to guarantee 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.'" *Id.* at 2242 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). The Supreme Court has recognized, as unenumerated rights, "the right to marry while in prison," "the right to obtain contraceptives," "the right to reside with relatives," "the right to make decisions about the education of one's children," "the right not to be sterilized without consent," "the right in certain circumstances not to undergo involuntary surgery, forced administration of drugs, or other substantially similar procedures," the "right to engage in private, consensual sexual acts," and the "right to marry a person of the same sex." *Dobbs*, 142 S. Ct. at 2257-58 (citing cases).

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

Response: Please see my response to Question 10, above.

12. **If you believe substantive due process protects some personal rights such as a right to contraceptives, 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 recognizes "the right to obtain contraceptives" as a fundamental right for substantive due process purposes. *Dobbs*, 142 S. Ct. at 2257. By contrast, the Court does not recognize economic rights such as those at stake in *Lochner* as fundamental rights for substantive due process purposes. *Id.* at 2262-63. If fortunate to be confirmed, I would faithfully apply binding Supreme Court and Ninth Circuit precedent, and would not allow any personal views to play a role in my application of those precedents.

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

Response: The Supreme Court has recognized Congress's power to regulate "the use of the channels of interstate commerce," "the instrumentalities of interstate commerce [including] persons or things in interstate commerce," and "those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). But Congress does not have the authority to compel individuals to engage in commerce. *NFIB*, 132 S. Ct. 2566. Nor does Congress have the authority to commander the executive or legislative branches of State government. *See Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992). Moreover, the Commerce Clause does not authorize Congress to abrogate State governments' Eleventh Amendment immunity from certain suits in federal court,

Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), or State governments' sovereign immunity against suits in their own state courts to which they have not consented, *Alden v. Maine*, 527 U.S. 706 (1999).

14. **What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?**

Response: The Supreme Court has recognized race, religion, national origin, and alienage as suspect classifications. The Court has described the qualities of suspect classes in varying ways, but generally has identified them as involving classifications "so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others." *City of Cleburne, Texas v. Cleburne Living Center*, 105 S. Ct. 3249, 3254 (1985).

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

Response: The Framers recognized that checks and balances and separation of powers were essential to the Constitution's design, both to ensure the proper functioning of government and to preserve individual liberty. As the Supreme Court has explained, "[s]eparation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others. Yet the dynamic between and among the branches is not the only object of the Constitution's concern. The structural principles secured by the separation of powers protect the individual as well." *Bond v. United States*, 131 S. Ct. 2355, 2365 (2011). Similarly, "federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *Id.* at 2364.

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: The Supreme Court has resolved a number of separation-of-powers disputes. *See Bond*, 131 S. Ct. at 2365 (citing cases). In *INS v. Chadha*, 462 U.S. 919 (1983), for example, the Court struck down a "one-House veto" provision of the Immigration and Nationality Act. This provision was unconstitutional, the Court explained, because the text of the Constitution requires legislative action to be passed by both Houses of Congress and presented to the President before becoming law. *Id.* at 946-959 (discussing Article I's presentment and bicameralism requirements and their historical background). And the Court emphasized that "the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution." *Id.* at 943. If fortunate to be confirmed, I would faithfully apply binding Supreme Court and Ninth Circuit precedent to any separation-of-powers case that came before me.

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

Response: Merriam-Webster defines "empathy" as the "action of understanding, being aware of, being sensitive to, and vicariously experiencing the feelings, thoughts, and experience of another." Judges should apply the law evenhandedly to the facts of every case before them, and their personal views should not play a role in that process. But in applying the law, judges should make every effort to understand and be aware of the arguments and positions of the parties who appear before them.

18. **Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Both are undesirable. Judges must endeavor, to the best of their ability, to avoid either outcome.

19. **From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?**

Response: I am generally familiar with the data showing that the Supreme Court exercised its power of judicial review far less frequently in the first seven decades of its experience, but I have not had occasion to study this issue with the care that would be needed to offer an informed causal opinion. With respect to aggressive judicial review and judicial passivity, if fortunate to be confirmed, I would endeavor to avoid either of those approaches, but would instead faithfully apply Supreme Court and Ninth Circuit precedent to uphold statutes that are constitutional and strike down statutes that are not.

20. **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; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." I understand judicial review to be the authority of a court, recognized in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), to invalidate laws that violate the Constitution.

Black's Law Dictionary defines "judicial supremacy" as the "doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." I understand judicial supremacy to be the rule, recognized in *Cooper v. Aaron*, 358 U.S. 1 (1958), that the

interpretations of the Constitution by the federal judiciary are, under Article VI, binding on the coordinate branches of the federal government and on the States.

21. **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: Article V provides mechanisms for amending the Constitution, and pursuant to that authority, constitutional amendments have been passed to overturn or reject decisions of the Supreme Court. For example, the Eleventh Amendment overturned the Supreme Court's decision in *Chisolm v. Georgia*, 2 U.S. 419 (1793), and the Fourteenth Amendment overturned the Supreme Court's decision in the *Dred Scott* case. But elected officials are required, under *Cooper v. Aaron*, 358 U.S. 1 (1958), to respect duly rendered judicial decisions.

22. **In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.**

Response: This is important to keep in mind when judging because the role of a court is a limited one. A court's sole authority is to interpret and apply the law, and it has no authority to substitute its policy views for those of the legislature or the executive.

23. **As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: If fortunate to be confirmed, I would be duty-bound, as a lower court judge, to faithfully apply binding Supreme Court and Ninth Circuit precedent. Although the Supreme Court and Ninth Circuit may decide to reverse their own precedent, as a federal district judge, I would not have any such authority.

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

Response: As the Sentencing Guidelines firmly recognize, a defendant's "race, sex,

national origin, creed, religion, and socio-economic status" should play no role in a sentencing judge's determination of the appropriate sentence. U.S.S.G. § 5H1.10 (race, sex, national origin, creed, religion, and socio-economic status are "not relevant in the determination of a sentence"); *see also* 28 U.S.C. § 994(d). Sentencing requires an individualized assessment, and a sentencing judge must consider the individual and the particular circumstances of the case, rather than any group identity or identities.

25. **The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?**

Response: I am not familiar with the statement described above or the context in which it was made. Black's Law Dictionary defines "equity" as, among other things, "[f]airness; impartiality; evenhanded dealing." If fortunate to be confirmed, I would conduct my work in a manner that is fair, impartial, and evenhanded.

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

Response: As the words written on the Supreme Court's building recognize, judges must perform their duties impartially and ensure equal justice under law. I believe these obligations are consistent with the duty to be fair, impartial, and evenhanded.

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

Response: As noted in my response to Question 25 above, I am not familiar with the statement or the context in which it was made. But the text of the Fourteenth Amendment does not protect "equity." It instead prohibits a State from denying persons within its jurisdiction the equal protection of the laws. The Supreme Court and the Ninth Circuit have developed a substantial body of precedent interpreting this constitutional provision, and if fortunate to be confirmed, I would faithfully apply those precedents.

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

Response: I am not an academic or social scientist, and have not had occasion to develop a definition of systemic racism. I know that the phrase can mean different things to different people. Moreover, Black's Law Dictionary does not define "system racism," and I am not aware of any cases authoritatively interpreting the

phrase. Black's Law Dictionary defines "systemic discrimination" as "an ingrained culture that perpetuates discriminatory policies and attitudes toward certain classes of people within society or a particular industry, profession, company, or geographic location." If fortunate to be confirmed, I would faithfully apply binding Supreme Court and Ninth Circuit precedent to the facts before me to determine the appropriate approach.

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

Response: I am not an academic or social scientist, and have not had occasion to develop a definition of critical race theory. I know that the phrase can mean different things to different people. Black's Law Dictionary defines the phrase as "a reform movement within the legal profession, particular within academia, whose adherents believe that the legal system has disempowered racial minorities." If fortunate to be confirmed, I would faithfully apply binding Supreme Court and Ninth Circuit precedent to the facts before me to determine the appropriate approach.

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

Response: As noted in my responses to Questions 28 and 29, I am not an academic or social scientist, and am not positioned to offer an informed distinction between critical race theory and systemic racism.

31. **As a prosecutor in 2013, you orchestrated a plea deal with admitted child rapist Antonio Gonzalez. The plea agreement stipulated a Guidelines range of 97 to 121 months, despite the recommended Guidelines range of 121 to 151 months for his crimes. The court disagreed with your recommendation, sentencing Gonzalez to a total of 180 months with an additional 120 months of supervision. Gonzalez' sentence was nearly seven years longer than the range you stipulated. In your nominations hearing on October 4, 2023, you implied that you "endeavored to follow the law faithfully" in all of your decisions—including this extreme downward variance. Do you consider recommending that a child abuser receive a sentence of nearly half of the duration recommended by the Guidelines following the law faithfully?**

Response: As I stated at my confirmation hearing, although I was assigned this case early in my tenure at the U.S. Attorney's Office for the Southern District of New York, I recognized the seriousness of the criminal conduct involved and worked to ensure that Mr. Gonzalez was arrested expeditiously. As a line prosecutor, I did not have the authority to enter into plea agreements, but instead could only extend offers that received supervisory approval. The government eventually authorized a plea agreement with Mr. Gonzalez that included a calculation of the anticipated Guidelines range for Mr. Gonzalez's offense conduct; that calculation anticipated that Mr. Gonzalez would face a sentencing range of 97 to 121 months' imprisonment. When the Probation Department later issued its presentence investigation report, however, it determined that the Guidelines range should be higher. In light of the plea

agreement's stipulations, the government recommended 121 months' imprisonment, which was at the top of the sentencing range that had been contemplated in the plea agreement. I filed a 35-page written sentencing memorandum that laid out, in detail, the seriousness of Mr. Gonzalez's conduct for the district court's consideration. I defended, in my role as advocate, the government's sentencing position in court. And when Mr. Gonzalez appealed his sentence to the Second Circuit, I successfully defended the reasonableness of the district court's 180-month sentence on appeal. *See United States v. Gonzalez*, 528 F. App'x 48 (2d Cir. Nov. 7, 2014).

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Micah W. J. Smith, nominated to be United States District Judge for the District of Hawaii

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. Federal law makes racial discrimination unlawful in a variety of contexts. *See, e.g.*, 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: As the Supreme Court explained in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Due Process Clause of the Fourteenth Amendment "has been held to guarantee 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.'" *Id.* at 2242 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). If fortunate to be confirmed, I would faithfully apply this test to any case raising the question of whether an as yet unarticulated unenumerated right can or should be identified, as well as any other relevant binding Supreme Court or Ninth Circuit precedent.

3. **How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

Response: I have served as a federal prosecutor for the last eleven years, principally litigating matters in trial court, and my judicial philosophy would be informed by that practical experience. I would try to be the kind of district judge that I always want to appear before: one who approaches each case with an open mind, treats all attorneys and litigants with respect and patience, prepares diligently, listens carefully to the arguments of the parties, thoroughly researches and faithfully applies all binding Supreme Court and Ninth Circuit precedent, and then explains the bases for his or her decision in a clear and respectful manner.

I have not studied the individual judicial philosophies of each of the Supreme Court Justices from the last seventy years to determine which of those Justices has a judicial philosophy that most closely resembles what I have described above. I recognize, too, that if fortunate to be confirmed, my role as a federal district court judge would be substantially different from that of a Supreme Court Justice. As a lower court judge, my duty would be to faithfully apply binding Supreme Court and Ninth Circuit precedent.

4. **Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an "originalist"?**

Response: I understand originalism to refer to the interpretive method under which a court interprets and applies the Constitution based on the original public meaning of

the Constitution's text. The Supreme Court has applied originalism to First Amendment Establishment Clause, Second Amendment, and Sixth Amendment Confrontation Clause issues, among others. If fortunate to be confirmed, as a lower court judge, I would faithfully apply the originalist interpretive method in all areas where the Supreme Court or Ninth Circuit has instructed me to do so.

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?**

Response: I do not have my own definition of "living constitutionalism," but Black's Law Dictionary defines it as the theory that the Constitution "should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." In the specific context of the Eighth Amendment's Cruel and Unusual Clause, the Supreme Court has, at times, considered contemporary standards of decency. *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551, 560-561 (2005) (observing that "we have established the propriety and affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual'" (quoting *Trop v. Dulles*, 356 U.S 86, 100-101 (1958) (plurality op.)). It is not clear to me whether this approach would be considered "living constitutionalism," which I understand may mean different things to different people. If fortunate to be confirmed, as a lower court judge, I would faithfully apply all binding Supreme Court and Ninth Circuit precedent.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: If the resolution of a constitutional issue of first impression were not controlled by binding precedent, I would still begin by looking to Supreme Court and Ninth Circuit precedent for guidance on the interpretive methods that should be used in the context presented. For example, in the context of the First Amendment's Establishment Clause, the Second Amendment, and the Sixth Amendment's Confrontation Clause, the Supreme Court has instructed that courts should apply an originalist method of interpretation that considers the original public meaning of the Second Amendment and the historical background of that text. *See Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407, 2428 (2022); *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004). If fortunate to be confirmed, I would faithfully apply that methodology to any areas where binding Supreme Court or Ninth Circuit precedent instructs me to do so.

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 "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). Similarly, the Supreme Court has explained that the language of the Constitution "offers a fixed standard for ascertaining what our founding document means." *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2245 (2022) (citation and internal quotation marks omitted). If fortunate to be confirmed, I would faithfully follow Supreme Court and Ninth Circuit precedent, and would only consider the public's current understandings when directed to do so by such precedent. For example, in considering whether materials are obscene and therefore unprotected by the First Amendment, Supreme Court precedent requires a trier of fact to consider, among other things, contemporary community standards. *Miller v. California*, 413 U.S. 15, 24 (1973).

8. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: No. The mechanism for changing the meaning of the Constitution is Article V. Moreover, although the Supreme Court sometimes applies the Constitution to circumstances the founding generation could not have anticipated, the Constitution's meaning does not change. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008) (explaining that "[j]ust as the First Amendment protects modern forms of communications . . . and the Fourth Amendment applies to modern forms of search . . . the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding").

9. **Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?**

Response: Yes. The Supreme Court's decision in *Dobbs* is binding precedent, and if fortunate to be confirmed, I would faithfully apply it.

a. **Was it correctly decided?**

Response: As nominee for a lower federal court, it is generally inappropriate for me to comment on the correctness of Supreme Court precedents. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If fortunate to be confirmed, I would be duty-bound to apply all binding Supreme Court precedent.

10. **Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: Yes. The Supreme Court's decision in *Bruen* is binding precedent, and if fortunate to be confirmed, I would faithfully apply it.

a. **Was it correctly decided?**

Response: As nominee for a lower federal court, it is generally inappropriate for me to comment on the correctness of Supreme Court precedents. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If fortunate to be confirmed, I would be duty-bound to apply all binding Supreme Court precedent.

11. **Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?**

Response: Yes. The Supreme Court's decision in *Brown* is binding precedent, and if fortunate to be confirmed, I would faithfully apply it.

a. **Was it correctly decided?**

Response: Because it is highly unlikely that litigation over *de jure* racial segregation of public elementary schools will arise in my lifetime, it is appropriate for me to say that I believe *Brown* was correctly decided. If fortunate to be confirmed, I would be duty-bound to apply it.

12. **Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?**

Response: Yes. The Supreme Court's decision in *Students for Fair Admissions* is binding precedent, and if fortunate to be confirmed, I would faithfully apply it.

a. **Was it correctly decided?**

Response: As nominee for a lower federal court, it is generally inappropriate for me to comment on the correctness of Supreme Court precedents. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If fortunate to be confirmed, I would not be duty-bound to apply all binding Supreme Court precedent.

13. **Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: Yes. The Supreme Court's decision in *Gibbons v. Ogden* is binding precedent, and if fortunate to be confirmed, I would faithfully apply it. I am also aware that the Supreme Court recently cited *Gibbons* favorably on the issue of the dormant commerce clause in *Nat'l Pork Producers Council v. Ross*, 143 S. Ct. 1142, 1152 (2023).

a. **Was it correctly decided?**

Response: As nominee for a lower federal court, it is generally inappropriate for me to comment on the correctness of Supreme Court precedents. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If fortunate to be confirmed, I would be duty-bound to apply all binding Supreme Court precedent.

14. **What sort of offenses trigger a presumption in favor of pretrial detention in the**

federal criminal system?

Response: Under the Bail Reform Act of 1984, there is a presumption in favor of pretrial detention when a defendant is charged with a drug trafficking offense carrying a maximum term of imprisonment of ten years or more; a firearm offense under 18 U.S.C. § 924(c); certain specified terrorism offenses; certain slavery and human trafficking offenses; and certain offenses involving minor victims. The complete listing of offenses creating a presumption in favor of detention is found in 18 U.S.C. § 3142(e).

a. **What are the policy rationales underlying such a presumption?**

Response: I am not aware of any Supreme Court or Ninth Circuit decisions authoritatively identifying the policy rationales underlying such a presumption. I am aware that in *United States v. Moore*, 607 F. Supp. 489, 494 (N.D. Cal. 1985), a district court, in rejecting constitutional challenges to the Bail Reform Act's presumptions, observed that the "legislative history of this statute contains a lengthy discourse on the reasons Congress believed drug offenders constituted a danger to the community and a risk of flight." And in *United States v. Jessup*, 757 F.2d 378 (1st Cir. 1985), then-Judge Breyer discussed some of this legislative history, including Congress's judgment that "flight to avoid prosecution is particularly high among persons charged with major drug offenses." *Id.* at 385 (quoting Senate Report).

15. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: Yes. The First Amendment's Free Exercise Clause imposes identifiable limits on what government may impose or require of such private institutions, requiring, among other things, that (1) government act in a manner that is free of hostility or bias toward religious beliefs, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018); and (2) any law or government action that is not neutral toward religion or generally applicable survive strict scrutiny, *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). The First Amendment's ministerial exception protects the autonomy of religious institutions with respect to internal management decisions that are essential to their central mission, including in the selection of individuals who play certain key roles. *See Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). In addition, federal statutes, including the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act, impose additional identifiable limits. *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

16. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: The Supreme Court has held that under the Free Exercise Clause, the government may not "impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes

the illegitimacy of religious beliefs and practices." *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1731 (2018). In addition, the Supreme Court has held that any law that treats any comparable secular activity more favorably than religious exercise is subject to strict scrutiny, and will be upheld only "to further interests of the highest order by means narrowly tailored in pursuit of those interests." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (citation and internal quotation marks omitted).

17. **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 in *Roman Catholic Diocese of Brooklyn* held that a preliminary injunction was appropriate for three reasons. First, the religious organizations were likely to succeed on the merits of their lawsuit because "statements made in connection with the challenged rules c[ould] be viewed as targeting the ultra-Orthodox Jewish community," because "the regulations c[ould not] be viewed as neutral because they single[d] out houses of worship for especially harsh treatment," and because the regulations could not survive strict scrutiny because they were not narrowly tailored to stemming the spread of COVID-19. 141 S. Ct. at 66-67 (citation, internal quotation marks, and alteration omitted). Second, the religious organizations would suffer irreparable injury without injunctive relief because the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* at 67 (citation and internal quotation marks omitted). Third, the state had failed to show that "granting the applications will harm the public," because it had not "shown that public health would be imperiled if less restrictive measures were imposed." *Id.* at 68.

18. **Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom*.**

Response: The Supreme Court in *Tandon* held that the religious organization was entitled to a preliminary injunction against a COVID-19 restriction. It identified four principles that led to this result. First, the Court explained that government regulations are not neutral and generally applicable if they treat *any* comparable secular activity more favorably than religious exercise. *Tandon*, 141 S. Ct. at 1296. The mere fact that *some* comparable secular activities are treated as poorly as religious activities does not render a government regulation neutral. *Id.* Second, the Court explained that in considering whether activities are comparable, a court should assess "the risks various activities pose, not the reasons people gather." *Id.* Third, the Court explained that when a law is not neutral or generally applicable, and therefore faces strict scrutiny, the government bears the burden of establishing that strict scrutiny has been satisfied. This

includes an obligation to demonstrate that "measures less restrictive of the First Amendment activity could not address [the government's] interest in reducing the spread of COVID." *Id.* at 1296-97. Fourth, the Court explained that a case is not mooted merely because the government "withdraws or modifies a COVID restriction in the course of litigation," where government officials remain free to "use their power to reinstate the challenged restrictions." *Id.* at 1297. The Court also reiterated that in the Free Exercise Clause context, strict scrutiny is not watered down, but rather means what it says. *Id.* at 1298.

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

Response: Yes. The First Amendment's Free Exercise Clause protects their right to their religious beliefs outside the walls of their houses of worship and homes.

20. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.***

Response: The Colorado Civil Rights Commission determined that a baker had violated Colorado's Anti-Discrimination Act by declining to create a cake for a wedding because of his religious opposition to same-sex marriages. The Supreme Court in *Masterpiece Cakeshop* held that the Commission violated the Free Exercise Clause rights of the baker by demonstrating hostility toward the baker's religious beliefs in its consideration of the case. As the Court explained, the Commission failed to meet its obligation to "proceed in a manner neutral toward and tolerant of [the baker's] religious beliefs." 138 S. Ct. at 1731. For that reason, the Court invalidated the Commission's order.

21. **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. An individual's religious beliefs are constitutionally protected so long as they are sincere. Those beliefs need not be consistent with the teachings of the faith tradition to which they belong. *See Frazee v. Illinois Dep't of Employee Sec.*, 109 S. Ct. 1514 (1989).

a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Yes. An individual's religious beliefs are constitutionally protected so long as they are sincere.

b. **Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: Yes. An individual's religious beliefs are constitutionally protected so long as they are sincere.

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: As a judicial nominee, it would not be appropriate for me to opine on religious doctrine. If fortunate to be confirmed, my role would be limited to assessing whether any individual's religious beliefs are sincerely held. I would have no authority to consider whether those views are acceptable or morally righteous.

22. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: The Supreme Court in *Our Lady of Guadalupe School* held that the First Amendment's ministerial exception precluded teachers from bringing employment discrimination claims against a religious school. The Court held that the ministerial exception applied because the teachers performed, among other things, religious functions for the school. As the Court explained, the "First Amendment protects the right of religious institutions to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Our Lady of Guadalupe School*, 140 S. Ct. at 2052 (citation and internal quotation marks omitted).

23. **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: Catholic Social Services (CSS) had long contracted with the City of Philadelphia to place children in foster care. But in 2018, Philadelphia refused to further contract with CSS on the ground that CSS would not place children in foster care with same-sex couples. The Supreme Court in *Fulton* held that Philadelphia's foster care policy was subject to strict scrutiny under the Free Exercise Clause because it was not generally applicable. The Court reached this conclusion because Philadelphia's policy included a mechanism for making individualized exemptions and yet the City refused to grant such an exemption to CSS. And the Court held that Philadelphia's policy could not satisfy strict scrutiny because while "[m]aximizing the number of foster families and minimizing liability are important goals," the City failed to "show that granting CSS an exemption will put those goals at risk." 141 S. Ct. at 1881-82.

24. **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: Maine adopted a program of tuition assistance for parents who lived in school districts that did not themselves provide a secondary school option. But Maine limited tuition assistance payments to "nonsectarian" schools. The Supreme Court in *Carson* held that because Maine's program disqualified certain private schools from public funding solely because they are religious, the program was not neutral and generally applicable and strict scrutiny applied. 142 S. Ct. at 1997. The Court further held that Maine's program failed to satisfy strict scrutiny because "an interest in separating church and state more fiercely than the Federal Constitution cannot qualify as compelling in the face of the infringement of free exercise." *Id.* at 1998 (citation, internal quotation marks, and alteration omitted).

25. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: A football coach at a public high school engaged in personal prayers at midfield at the conclusion of games. The school responded by forbidding the coach from continuing his religious exercise. The Supreme Court in *Kennedy* held that this was a violation of the coach's Free Exercise Clause rights, and that the school's actions were not justified by Establishment Clause concerns. In resolving the Establishment Clause issue, the Court recognized that it had long ago abandoned the so-called *Lemon* test that had once applied to Establish Clause questions. 142 S. Ct. at 2427. In place of the *Lemon* test, the Court in *Kennedy* recognized that it had "instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings." *Id.* at 2428 (citation and internal quotation marks omitted); *see also id.* ("An analysis focused on original meaning and history, this Court has stressed, has long represented the rule rather than some 'exception' within the Court's Establishment Clause jurisprudence.").

26. **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: Officials in a county in Minnesota insisted that the Amish adopt certain modern technologies or risk jail, fines, and even losing their farms. The Supreme Court in *Mast* granted certiorari, vacated the decision of the Court of Appeals of Minnesota, and remanded for further consideration in light of *Fulton v. Philadelphia*, 141 S. Ct. 1868 (2021). Concurring in the order, Justice Gorsuch wrote to "highlight a few issues the lower courts and administrative authorities may wish to consider on remand." *Id.* at 2430. Justice Gorsuch explained that under the Religious Land Use and Institutionalized Persons Act, the government bore the burden of showing that its regulations served a compelling government interest and that its regulations were narrowly tailored. *Id.* at 2432. Justice Gorsuch further explained that a court should not treat the government's *general* interest as compelling "without reference to the *specific* application of those rules to *this* community." *Id.* (emphasis in original). Furthermore, Justice Gorsuch noted that "the County and lower courts erred by failing to give due weight to

exemptions other groups enjoy." *Id.* More fundamentally, Justice Gorsuch emphasized that "RLUIPA prohibits governments from infringing sincerely held religious beliefs and practices except as a last resort." *Id.* at 2433.

27. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: As a judicial nominee, it would not be appropriate for me to opine on the proper interpretation of Section 1507 in hypothetical future cases. *See* Code of Conduct for United States Judges, Canon 3(A)(6). But I am aware that a state statute "modeled after" Section 1507 was held to be facially constitutional in *Cox v. Louisiana*, 379 U.S. 559, 561 (1965).

28. **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.

29. **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.

30. **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.

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

Response: The Constitution's Appointments Clause authorizes the President, with advice and consent of the Senate, to make political appointments. As a judicial nominee, it would not be appropriate for me to comment on what the President and Senate should consider in exercising their constitutional authorities. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If fortunate to be confirmed, and if the legality of a political appointment were to come before me, I would faithfully apply binding Supreme Court and Ninth Circuit precedent.

32. **If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?**

Response: The Supreme Court has held that, in certain circumstances, evidence of a program or policy that has a racially disparate outcome can constitute evidence of illegal discrimination under Title VII. *See Ricci v. DeStefano*, 129 S. Ct. 2658, 2672-73 (2009) ("Title VII prohibits both intentional discrimination (known as 'disparate treatment') as well as, in some cases, practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities (known as "disparate impact")). But the Supreme Court has made clear that disparate impact is not a valid theory under the Fourteenth Amendment's Equal Protection Clause. *Personnel Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 272 (1979) (explaining that "even if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose"). If fortunate to be confirmed, I would faithfully apply binding Supreme Court and Ninth Circuit precedent to any case that came before me involving a claim of racially disparate impact.

33. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a judicial nominee, it would not be appropriate for me to comment on the appropriate number of justices on the U.S. Supreme Court. If fortunate to be confirmed, I would faithfully apply the decisions of the Supreme Court, and the number of Justices sitting on that Court would have no bearing on my work as a lower court judge.

34. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No.

35. **What do you understand to be the original public meaning of the Second Amendment?**

Response: In *Heller* and *Bruen*, the Supreme Court authoritatively settled the original public meaning of the Second Amendment. The Court in those cases held that the text of the Second Amendment recognizes a preexisting individual right to keep and bear arms for purposes of self-defense, and that this right is not dependent upon militia service.

36. **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 *Heller* and *McDonald*, the Supreme Court struck down laws that precluded individuals from possessing operable handguns in their homes for self-defense. In *Bruen*, the Supreme Court struck down a state licensing scheme that required individuals to demonstrate a special need before they would be permitted to carry handguns in public for self-defense. More broadly, the Court in *Bruen* established that whenever the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects the conduct and the government bears the burden of justifying its regulation by "demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2129-2130.

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

Response: Yes. The Supreme Court in *McDonald* recognized that the individual right to keep and bear arms for purposes of self-defense is a fundamental right protected by the Constitution.

38. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: No. The Supreme Court has recognized that the Second Amendment is not a "second-class right." *Bruen*, 142 S. Ct. at 2156.

39. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: No. The Supreme Court has recognized that the Second Amendment is not a "second-class right." *Bruen*, 142 S. Ct. at 2156.

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

Response: The Supreme Court has long recognized that the executive has the authority under the Constitution to take care that the laws are faithfully executed, and that this constitutional authority grants the executive discretion in determining how to use limited resources and set enforcement priorities. *See United States v. Texas*, 143 S. Ct. 1964 (2023). But it would not be appropriate for me, as a judicial nominee, to opine on the

propriety of executive action or inaction in any particular cases or circumstances. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If fortunate to be confirmed, I would faithfully apply binding Supreme Court and Ninth Circuit precedent to any such case that came before me.

41. **Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.**

Response: My understanding is that prosecutorial discretion involves the decision of the executive branch to determine how to use limited resources and set enforcement priorities. By contrast, I understand a substantive administrative rule change to be a change that requires the executive branch to follow appropriate administrative-law procedures to change an existing rule.

42. **Does the President have the authority to abolish the death penalty?**

Response: No.

43. **Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS.***

Response: An association of realtors challenged a nationwide eviction moratorium for residential rental properties that had been imposed by the CDC. The Supreme Court held that the association had a substantial likelihood of success on the merits. 141 S. Ct. at 2488. Among other things, the Court noted that even if the relevant statutory text were ambiguous as to whether the CDC had the authority to impose such a moratorium, "the sheer scope of the CDC's claimed authority . . . would counsel against the Government's interpretation." *Id.* at 2489. As the Court explained, "[w]e expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Id.* (citation and internal quotation marks omitted).

44. **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: No.

Questions from Senator Thom Tillis
for Micah W. J. Smith, nominee to the U.S. District Court for the District of Hawaii

1. **Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

   Response: A judge's personal views and background are irrelevant to their duty to apply the law evenhandedly and faithfully to the cases before them.

2. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: I believe impartiality is an expectation for a judge, as well as a duty. The Code of Conduct for United States Judges requires a judge to "perform the duties of the office fairly, impartially, and diligently."

3. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary defines judicial activism as "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." Defined in this manner, I consider judicial activism to be completely inappropriate, inconsistent with the duty of a federal judge, and incompatible with the rule of law.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Yes. Because a judge is required to faithfully apply the law, and must set aside their own personal views, a judge should sometimes reach conclusions with which they may personally disagree. If fortunate to be confirmed, I would reconcile this by always keeping in mind that it is for policymakers to decide what policies the law should enact, and that the judge's only task is to apply the law faithfully, not to assess its desirability.

6. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: If fortunate to be confirmed, I would ensure this by faithfully applying binding Supreme Court and Ninth Circuit precedent recognizing and protecting Second Amendment rights. This includes the Supreme Court's holdings in *Heller* and *McDonald* that the Second Amendment protects an individual right to keep a firearm in one's home for self-defense purposes, and the Supreme Court's holding in *Bruen* that the Second Amendment protects an

individual right to carry a firearm in public for self-defense purposes. I would also faithfully apply the standard that *Bruen* establishes for scrutinizing laws or regulations that burden the individual right to keep and bear arms for self-defense: whenever the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects the conduct and the government bears the burden of justifying its regulation by "demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2129-2130 (2022).

7. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: If fortunate to be confirmed, I would faithfully apply binding Supreme Court and Ninth Circuit precedent to any qualified immunity issue presented to me. Under that precedent, a court must grant qualified immunity to law enforcement personnel and departments when either (1) the plaintiff fails to adduce facts sufficient to make out a constitutional or statutory violation, or (2) the alleged unconstitutionality of the officers' conduct was not clearly established at the time of the conduct at issue. The Supreme Court in *Pearson v. Callahan*, 129 S. Ct. 808 (2009), clarified that a court may grant qualified immunity for either of those reasons standing alone, and need not resolve whether the plaintiff's allegations make out a violation before concluding that any such violation would not have been clearly established at the time of the alleged misconduct.

8. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: The Supreme Court has recognized that qualified immunity aims to balance "two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson*, 129 S. Ct. at 815. As both the Supreme Court and the Ninth Circuit have recognized, applied properly, qualified immunity "protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Mills v. Graves*, 930 F.2d 729, 731 (9th Cir. 1991) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Beyond recognizing these general principles, however, I believe it would not be appropriate for me, as a judicial nominee, to opine on the question of whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety, in order to avoid creating the impression that I have prejudged issues that could come before me if I am fortunate to be confirmed.

9. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: As a judicial nominee, I believe it would not be appropriate for me to opine on the question of the proper scope of qualified immunity protections for law enforcement, in order

to avoid creating the impression that I have prejudged issues that could come before me if I am fortunate to be confirmed.

10. What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?

Response: While in private practice at the law firm of O'Melveny & Myers LLP, I worked on a few briefs involving patent disputes, both in the Federal Circuit and in the Supreme Court. As an Assistant U.S. Attorney, I have investigated and prosecuted criminal copyright infringement cases. And I studied copyright law while in law school. From these experiences, I understand the importance of ensuring that IP rights are faithfully enforced, and if fortunate to be confirmed, I would faithfully apply binding Supreme Court and Ninth Circuit precedent concerning IP rights.

11. In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"

Response: The District of Hawaii is not broken down into divisions, and as I understand it, cases here are randomly assigned to any of the four active judges as well as senior judges. The Southern District of New York, where I previously practiced, likewise assigned matters randomly to its numerous active and senior judges. I am not sufficiently familiar with how other judicial districts (including those with divisions having only one judge) assign cases to be able to offer an informed opinion about the challenges those districts might face. But as noted above, if fortunate to be confirmed, I would not be faced with those types of issues in the District of Hawaii.

12. 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 shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?

Response: As a judicial nominee, I believe it would not be appropriate for me to opine on the quality of the Supreme Court's patent eligibility jurisprudence, in order to avoid creating the impression that I have prejudged issues that could come before me if I am fortunate to be confirmed. As mentioned above, however, I have had occasion to work on patent cases while in private practice, and as a result am aware of some of the challenges that parties face when litigating patent cases.

September 27, 2023

The Honorable Richard Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Graham:

The undersigned law enforcement officers submit this letter in support of the nomination of Micah Smith to the distinguished position of Federal Judge in the United States District Court in Hawaii. Each undersigned law enforcement officer has worked closely with Micah in his current position as an Assistant United States Attorney of the District of Hawaii.

As case agents and task force officers on many federal and state prosecutions, varying from simple to long term investigations of criminal organizations involving state, county, and federal law enforcement agencies, we worked closely with Micah. During these long-term complex investigations Micah was involved in every aspect of the investigation: from writing search warrants, Title III (wiretap applications), meeting and interviewing cooperating witnesses, defendants, and the planning of legal strategy. Through these complex investigations he developed the experience in investigating and prosecuting successful cases.

Micah's ability to coordinate and collaborate with various law enforcement agencies from other states and cities was a key reason for successful prosecutions. His dedication and willingness to work late into the night, early morning hours through holidays and weekends is a testament to his commitment to his peers and the community. It is our belief that he will bring that same passion and work ethic to his duties as a federal judge.

Finally, we observed Micah interacting with defense counsel, defendants, witness and law enforcement agencies and he has a reputation of being honest, straightforward, firm and fair. These are qualities that distinguished him as a federal prosecutor. They will serve him well as a federal judge. We therefore support his nomination to be a federal judge in the district of Hawaii.

Very Respectfully,

Anthony K. Abalos
Sergeant, Kauai Police Department
Task Force Officer, U.S. Federal Bureau of Investigation

Christian Jenkins
Lieutenant, Kauai Police Department
Task Force Officer, U.S. Federal Bureau of Investigation

Brian Silva
Detective, Kauai Police Department
Task Force Officer, U.S. Federal Bureau of Investigation

Eric Caspillo
Detective, Kauai Police Department
Task Force Officer, U.S. Federal Bureau of Investigation

Michael Nii
Detective/Bomb Technician, Kauai Police Department
Task Force Officer, U.S. Federal Bureau of Investigation

Hanson Hsu
Detective/Bomb Technician, Kauai Police Department
Task Force Officer, U.S. Federal Bureau of Investigation

Brad Candido
Detective, Kauai Police Department
Former Task Force Officer, U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives

Darin Irimata
Detective, Kauai Police Department
Task Force Officer, U.S. Department of Homeland Security Investigation

Dustin Broad
Officer, Kauai Police Department
Task Force Officer, United States Marshals Service

Tyler Yates
Officer, Kauai Police Department
Former Task Force Officer, U.S. Marshal Service

Allan Andres
Officer, Kauai Police Department
Task Force Officer, U.S. Federal Bureau of Investigation

Aaron Relacion
Officer, Kauai Police Department
Task Force Officer, U.S. Federal Bureau of Investigation

Kalani Apilado
Officer, Kauai Police Department
Task Force Officer, U.S. Federal Bureau of Investigation

U.S. Department of Justice

United States Attorney
District of Hawai'i

PJKK Federal Building
300 Ala Moana Blvd., Room 6-100
Honolulu, Hawaii 96850

(808) 541-2850
FAX (808) 541-2958

September 28, 2023

By Regular Mail

The Honorable Richard Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Graham:

I am a prosecutor in the U.S. Attorney's Office for the District of Hawaii and write to offer my unconditional support for the nomination of Micah Smith to the United States District Court for the District of Hawaii. After working closely with him for nearly five years, I know that he is highly qualified for this position and will be a distinguished judge if confirmed.

Micah's professional background as a law clerk for the U.S. Court of Appeals for the Second Circuit and U.S. Supreme Court, as well as his time in civil litigation will serve him well as a judge. As a prosecutor, Micah has demonstrated his integrity and commitment to justice by being fair and reasonable, but firm with defendants and defense counsel. Micah's impeccable intellect and diligence are only surpassed by his thoughtfulness, humility, and temperament. If confirmed, he

will continue to uphold the rule of law and be an even-handed jurist who treats all parties with dignity and respect.

Micah's diverse work experience, intelligence, character, and demeanor will make him an outstanding judge. Therefore, I humbly recommend that the Senate confirm his nomination.

Respectfully submitted,

Darren W.K. Ching
DARREN W.K. CHING
Assistant U.S. Attorney

HSBA
Hawaii State Bar Association

September 28, 2023

The Honorable Richard Durbin
Chair, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington D.C. 20510

The Honorable Lindsey Graham
Ranking Member, Committee on the Judiciary
United States Senate
211 Russell Senate Office Building
Washington D.C. 20510

RE: Micah W.J. Smith U.S. District Court Judicial Nominee for the District of Hawaii

Dear Senator Durbin and Senator Graham:

The Board of Directors of the Hawaii State Bar Association (HSBA) appreciates the opportunity to submit comments on the nomination of Micah W.J. Smith for the position of Judge of the U.S. District Court for the District of Hawaii.

Prior to informing a confirming authority of its findings on a judicial nominee, the HSBA Board of Directors follows a multi-step review process.

- Notification to the nominee of the HSBA appointment review process, which includes a questionnaire requesting educational credentials, legal and other professional work experiences, personal references; a resume; redacted copies of applications and questionnaires submitted to other entities; a form authorizing disclosure from the Hawaii Office of Disciplinary Counsel of any disciplinary action; and an interview with the HSBA Board of Directors in Honolulu.
- Notification via electronic transmission to the HSBA membership of the appointment and a request for comments on the nominee.
- Appointment of a three-person review Subcommittee of HSBA Board members by the HSBA President, which serves as a neutral fact-finding body to review documentation submitted by the nominee, contact references submitted by the nominee, review comments received from the HSBA membership, and conduct follow-up member contact for clarification, if necessary, for presentation to the HSBA Board.
- Submittal of a report by the three-person review Subcommittee to the HSBA President, and subsequently to the entire HSBA Board.
- Meeting of the HSBA President and the nominee prior to the scheduled interview of the nominee by the HSBA Board.

OFFICERS
Rhonda L. Griswold, President
Jesse K. Souki, President-Elect
Mark M. Murakami, Vice-President
Lanson K. Kupau, Secretary
Alika L. Piper, Treasurer

DIRECTORS
Jocelyn W.C. Chong
Steven J.T. Chow
Vladimir Devens
Jessica R. Domingo
Geraldine N. Hasegawa (East Hawaii)
Kristin E. Izumi-Nitao
Ronette M. Kawakami
Carol S. Kitaoka (West Hawaii)
Erin M. Kobayashi
Jacob K. Lowenthal (Maui)
Emiko Meyers (Kauai)
Mark K. Murakami
Paul W. Naso
Zale T. Okazaki
Mark G. Valencia

YLD PRESIDENT
Lisa Yang

IMMEDIATE PAST PRESIDENT
Shannon S. Sheldon

HSBA/ABA DELEGATE
Leslie A. Hayashi

EXECUTIVE DIRECTOR
Patricia A. Mau-Shimizu

1100 Alakea Street, Suite 1000 • Honolulu, HI 96813 • Phone: (808) 537-1868 • Fax: (808) 521-7936 • http://HSBA.org

- Interview of the nominee by the HSBA Board.
- Deliberation of the HSBA Board which culminates in a qualified or unqualified vote.
- Submittal of the HSBA Board's recommendation to the confirming authority.

The HSBA President met with Mr. Smith on September 25th to discuss the Subcommittee's findings. On September 26th, Mr. Smith was interviewed by the HSBA Board of Directors in an executive session.

Documentation submitted by Mr. Smith was reviewed and all the references listed were contacted for their personal opinions and observations. The comments and letters received from HSBA members reflected an affirmation of Mr. Bennett in all categories of the HSBA criteria which include:

- Integrity
- Diligence
- Legal knowledge and ability
- Professional experience
- Judicial temperament
- Financial responsibility
- Public service
- Ability to fulfill the responsibilities and duties of the position

Mr. Smith has a remarkable life story. He grew up in public housing on the Island of Kauai, attended Kauai public schools, and then attended Lock Haven University of Pennsylvania, followed by Harvard Law School and a clerkship with United States Supreme Court Justice David Souter. After working in Washington D.C. and New York City for a decade, he returned home in 2018 to serve as an Assistant United States Attorney for the District of Hawaii. Upon returning, he immediately sought out pro bono opportunities, including serving as Co-Chair of the HSBA Delivery of Legal Services to the Public Committee, which focuses on access to justice and providing legal resources to indigent clients.

After the interview of the nominee, which included dialogue and questioning relating to his background, experiences, and reasons for pursuing the position of U.S. District Court Judge for the District of Hawaii, the Board of the Hawaii State Bar Association found Mr. Micah W.J. Smith to be **QUALIFIED**.[1]

Sincerely,

Rhonda L. Griswold
HSBA President

[1] Please note that, unlike the American Bar Association, the HSBA findings are limited to determining whether a nominee is "qualified" or "unqualified." We do not have other rankings such as "well qualified."

September 26, 2023

The Honorable Richard J. Durbin
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey O. Graham
Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Graham:

I write this letter to express my heartfelt support for the nomination of Assistant United States Attorney Micah Smith to the United States District Court for the District of Hawaii.

I have been heavily involved in the Hawaii law enforcement community for over 26 years, both as an officer with the Honolulu Police Department, and most recently in my capacity with Homeland Security Investigations, as I oversee our operations on Hawaii Island, and on the Islands of Maui and Kauai. I first met Micah over four years ago when I first moved back to Hawaii after a military deployment followed by a two-year stint in our Washington DC Headquarters. I was introduced to Micah by a work colleague who described him as someone I would instantly get along with, as we both shared the same work ethic and level of commitment to our respective professions. After leaving his office following a three-hour introductory meeting, I immediately realized that Micah not only was an impressive attorney, but a quality human being.

Since that initial meeting, Micah and I have spoken about a variety of issues on at least a weekly basis. He would always be my first call when I wanted to present a hypothetical situation or scenario pertaining to an investigation or a proposed course of action. Despite Micah being quite possibly the busiest and most sought-after attorney in the office, he would always carve out time to return my call and listen carefully to the set of facts presented to him before offering any advice or suggestions. Micah would do careful legal research and offer me several proposed solutions and/or ideas as investigations would progress. I was, and still continue to be very appreciative of Micah's unique, informative, and creative perspective when it came to legal issues, application of current case law, and ethical considerations.

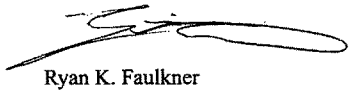
I can count numerous times when Micah would take time out of his busy schedule and see me during an unannounced office visit. We would catch up on sports, current events, the progress of investigations, and many other things. The idea that Micah would sometimes even call to run an idea by me was very humbling, in that he is such a great legal mind, and has so much to offer others, but made it a point to seek out my opinion to demonstrate his willingness to

learn other perspectives and make a decision after carefully considering things from all sides. As a Judge, those basic qualities are most impressive because he sees the world as it is. The application of the law isn't always black and white, and Micah's level of thoughtfulness and analysis, not only from a legal perspective but also a human one, will translate to fair and meaningful decisions from the bench.

Micah's dogged and tireless approach to cases also speaks volumes about how much he cares about our local community. Having grown up on the small Island of Kauai, his understanding of our unique culture, economic challenges, and other variables makes him well-positioned to apply the law in a fair and equitable manner across the board. Micah's welcoming smile, attentiveness, and compassion during our meetings and interactions speaks to his authenticity. I have been around for over 26 years in law enforcement and have spent over 30 years serving our Nation in the Army Reserve, and I know the difference between someone who is genuine and someone who is just putting on a show. Micah falls squarely in the category of someone who is genuine, even-tempered, and good hearted.

In summary, for the reasons stated above, Micah Smith would make an amazing addition to the well qualified Federal judges in the District Court for the District of Hawaii.

Respectfully submitted,



Ryan K. Faulkner

October 2, 2023

The Honorable Richard J. Durbin
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey O. Graham
Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Micah Smith to the United States District Court for the District of Hawaii

Dear Chairman Durbin and Senator Graham:

We write today to express our support for the nomination of Micah Smith to serve as a District Judge on the United States District Court for the District of Hawaii. All of us served as law clerks at the United States Supreme Court during October Term 2007, when Micah clerked for Justice David Hackett Souter. Each of us signs this letter in a personal capacity and not on behalf of any current or former employer.

We hold a diverse array of political and jurisprudential views and have worked in a wide range of positions in public service, academia, and private practice. We are unified, however, in our conviction that Micah possesses the extraordinary intellect, character, and temperament to serve with distinction as a United States District Court judge.

As clerks, we worked very closely with Micah. We observed firsthand his approach to the law: his immense analytical talent, his extraordinary writing ability, his unwavering diligence, and his humility and open-mindedness. In his work, Micah exhibited integrity in every way. He brought the same rigorous attention to every matter, irrespective of the parties or issues involved, and he was conscientious and fair-minded in every task.

Micah also demonstrated the utmost consideration and respect toward everyone at the Supreme Court, including co-clerks, Justices, and the entire Court staff. He was always kind, calm, and collaborative. He welcomed frank and open discussion on any legal issue, with any colleague. And he was equally well known for his warm smile and quiet generosity toward one and all.

Since our year together at the Court, Micah has worked in private practice, in the U.S. Attorney's Office for the Southern District of New York, and in the U.S. Attorney's Office for the District of Hawaii. Some of us have been fortunate enough to work alongside Micah in those roles or to intersect on our professional paths. Whether we have followed Micah's career from nearby or afar, we have seen in it the same impressive traits that we witnessed at the Supreme Court.

We have known Micah for more than fifteen years, and we believe he has the necessary qualifications and temperament to make an exemplary federal judge. We are united in supporting his nomination to the United States District Court.

Respectfully submitted,

Jason Burnette
Law clerk to Chief Justice Roberts

Anton Metlitsky
Law clerk to Chief Justice Roberts

Sara Klein Eisenberg
Law clerk to Justice Stevens

Todd Gluth
Law clerk to Justice Stevens

Kate Shaw
Law clerk to Justice Stevens

Abby Wright
Law clerk to Justice Stevens

Aditya Bamzai
Law clerk to Justice Scalia

John Bash
Law clerk to Justice Scalia

Bryan Killian
Law clerk to Justice Scalia

Heidi Bond
Law clerk to Justices Kennedy and O'Connor

Michael Chu
Law clerk to Justice Kennedy

Stephen Cowen
Law clerk to Justice Kennedy

Annie Kastanek
Law clerk to Justice Kennedy

C.J. Mahoney
Law clerk to Justice Kennedy

Bert Huang
Law clerk to Justice Souter

Leslie Kendrick
Law clerk to Justice Souter

Michael Mongan
Law clerk to Justice Souter

Eric McArthur
Law clerk to Justice Thomas

Leila Mongan
Law clerk to Justice Thomas

Heath Tarbert
Law clerk to Justice Thomas

Ruthanne M. Deutsch
Law clerk to Justice Ginsburg

Brian Fletcher
Law clerk to Justice Ginsburg

Thomas G. Saunders
Law clerk to Justice Ginsburg

Zachary D. Tripp
Law clerk to Justice Ginsburg

Michael Bosworth
Law clerk to Justice Breyer

Karen Dunn
Law clerk to Justice Breyer

Eric Feigin
Law clerk to Justice Breyer

Philippa Scarlett
Law clerk to Justice Breyer

James Hunter
Law clerk to Justice Alito

Geoffrey J. Michael
Law clerk to Justice Alito

David H. Moore
Law clerk to Justice Alito

Jessica Phillips
Law clerk to Justice Alito

September 26, 2023

The Honorable Richard J. Durbin
Chair
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey O. Graham
Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Graham:

The undersigned law enforcement officer submits this letter in support of the nomination of Judge Micah Smith to the United States District Court in Hawai'i. I worked closely with Micah Smith when he was an Assistant United States Attorney investigating and prosecuting individuals who violated federal firearms, gambling, and drug-trafficking laws. I believe the complexity of his work as a prosecutor, his commitment to his work, and his character will make him an outstanding federal judge.

I have worked numerous large-scale investigations involving criminal organizations over my career which involved collaborations with law enforcement and prosecuting attorneys within Hawai'i, continental United States, and international. I was involved in one particular case where the complexity was a unique obstacle facing the investigators. Micah flew to the island of Maui to meet with investigators to discuss the obstacles and strategize. He drove around with investigators, where we showed him the unique challenges of the case and different affected areas within the island of Maui. Micah was instrumental in discussions with different investigative techniques, and how we could successfully run this complex investigation as he had extensive knowledge and experience. He was involved in every step of this case: assisting with writing search warrants, wiretap applications, and carefully planning a prosecution strategy. Micah was diligent and meticulous to each aspect of the case.

Micah showed perseverance and dedication throughout our cases. On many occasions, communications between investigators and Micah would take place late in the night, weekends and holidays. He was highly organized and his adherence to deadlines made investigations function seamlessly. I believe he will do the same for matters assigned to him as a federal judge.

On August 8, 2023, the island of Maui experienced unprecedented disaster when a fire engulfed different parts of the island of Maui and devastated the town of Lahaina. Micah was one of the first individuals to contact me to discuss how the community was doing. He wanted to know how he could help and discussed the challenges facing the community. Micah has shown unwavering commitment and dedication to his community, family and his career. I support his nomination to be a federal judge in Hawai'i.

Respectfully,

Lucas Hetzler

Police Officer, Maui Police Department

Task Force Officer, Federal Bureau of Investigation

October 2, 2023

The Honorable Richard J. Durbin
Chair
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey O. Graham
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Micah Smith to the United States District Court for the District of Hawai`i

Dear Chair Durbin and Ranking Member Graham:

We write on behalf of the Board of Directors of the National Asian Pacific American Bar Association (NAPABA)—Hawai`i Chapter to express our wholehearted support for the nomination of Micah Smith to the United States District Court for the District of Hawai`i and to urge his speedy confirmation. NAPABA is the nation's largest Asian Pacific American membership organization representing the interest of 60,000 attorneys, judges, law professors, and law students. The Hawai`i Chapter includes federal and state judges, present and former prosecutors, civil practitioners, and business leaders.

Micah Smith is well qualified to serve as a United States District Judge. His list of professional and academic achievements is impressive: He graduated *magna cum laude* from Harvard Law School in 2006. After graduating law school, Mr. Smith worked as a law clerk for Judge Guido Calabresi on the U.S. Court of Appeals for the Second Circuit from 2006 to 2007, and Justice David H. Souter on the U.S. Supreme Court from 2007 to 2008. Mr. Smith then worked for several years at a leading law firm in D.C. and as an Assistant United States Attorney in the

Southern District of New York (where he was Co-Chief of the Violent and Organized Crime Unit and Acting Deputy Chief of Appeals) before returning home to Hawai'i in 2018. Mr. Smith has gained experience in both civil and criminal legal practice, and at both the trial and appellate level. He has also gained a well-earned reputation as a person with a tremendous work ethic, keen analytical skills, and a well-deserved reputation for acting with integrity and treating others with respect.

Mr. Smith is a product of the Hawai`i public schools. He was raised on Kaua'i and graduated from Kaua'i High School in 1999.

Since returning to Hawai'i, Mr. Smith has served as an Assistant United States Attorney in the U.S. Attorney's Office in Honolulu. In that role, he handles a broad range of criminal cases and has served as Deputy Chief of the Criminal Division, Criminal Civil Rights Coordinator, and Chief of Appeals and Legal Strategy.

Mr. Smith has deep local roots and a strong commitment to serving his community. He serves as Chair of the Committee on the Delivery of Legal Services to the Public with the Hawai'i State Bar Association, as a Board Member of the Hawai'i Justice Foundation, and as a Committee Member of the African American Lawyers Association of Hawai'i. He also actively participates in events hosted by NAPABA-Hawai`i, as well as the Federal Bar Association-Hawai`i Chapter.

NAPABA-Hawai`i urges you to confirm Mr. Smith for the United States District Court for the District of Hawai`i.

We thank you for your consideration.

Sincerely,

Board of Directors
National Asian Pacific American Bar Association-Hawai`i Chapter



By JOHN RHEE
Its President



October 1, 2023

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lindsey O. Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Letter of Support for Micah W. J. Smith

Dear Chairman Durbin and Ranking Member Graham:

The National Asian Pacific American Bar Association strongly supports Micah W. J. Smith to serve on the U.S. District Court for the District of Hawai'i.

NAPABA is the national association of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 60,000 attorneys and over 90 national, state, and local bar associations. Its members include solo practitioners, large firm lawyers, corporate counsel, legal services and non-profit attorneys, and lawyers serving at all levels of government.

Micah W. J. Smith is a dedicated public servant and serves as an Assistant United States Attorney, Deputy Chief of the Criminal Division, and Criminal Civil Rights Coordinator in the U.S. Attorney's Office for the District of Hawaii. He has also been the office's Chief of Appeals and Legal Strategy since 2022. Previously, Mr. Smith served as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Southern District of New York from 2012-18.

Earlier in his career, he was an associate and counsel in the Supreme Court & Appellate Litigation Section at O'Melveny & Myers. Mr. Smith's first legal job was doing pro bono work with the Legal Aid Society of Hawai'i during summer break from law school.

Mr. Smith previously clerked for Justice David H. Souter on the U.S. Supreme Court and Judge Guido Calabresi on the U.S. Court of Appeals for the Second Circuit. He is a magna cum laude graduate of

Harvard Law School and received his B.A., summa cum laude, from Lock Haven University of Pennsylvania.

Born and raised in Hawaii, Mr. Smith grew up in Hanamā'ulu and attended Kauai High School. Active in the Hawai'i community, he is Chair of the Committee on the Delivery of Legal Services to the Public with the Hawai'i State Bar Association and a Board Member of the Hawai'i Justice Foundation.

NAPABA proudly supports Micah W. K. Smith's nomination and urges the swift confirmation of his nomination.

Sincerely,

Priya Purandare

National Asian Pacific American Bar Association
Executive Director

October 2, 2023

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey O. Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Nomination of Micah W.J. Smith to the United States District Court for the District of Hawaii

Dear Chairman Durbin and Ranking Member Graham:

We respectfully submit this letter in strong and unqualified support of the nomination of Micah W.J. Smith to the United States District Court for the District of Hawaii. We are all former prosecutors from the U.S. Attorney's Office for the Southern District of New York who had the pleasure of serving with Mr. Smith while he was an Assistant United States Attorney ("AUSA") and later a supervisor. Mr. Smith possesses an incisive legal mind, treats everyone he meets with humility and unparalleled kindness, and throughout his career has demonstrated a commitment to securing justice for all. In short, he has all the qualities that will make him an exceptional district court judge.

A graduate of Kauai High School, Mr. Smith went on to graduate magna cum laude from Harvard Law School. He then served as a law clerk for a judge of the U.S. Court of Appeals for the Second Circuit and for a justice of the U.S. Supreme Court. After working at a law firm, Mr. Smith joined the Southern District of New York U.S. Attorney's Office in 2012. There, he was quickly promoted to Acting Deputy Chief of Appeals and then Co-Chief of the Violent & Organized Crime Unit. In 2018, Mr. Smith returned to Hawaii and joined the U.S. Attorney's Office for the District of Hawaii. He has served in that Office as Deputy Chief of the Criminal Division, Chief of Appeals and Legal Strategy, and Criminal Civil Rights Coordinator.

Throughout his more than a decade of public service, Mr. Smith has earned the deep respect of his colleagues, his adversaries, members of the bench, and the public he has served. We all have experienced first-hand Mr. Smith's brilliant legal mind. Honed from his time at Harvard Law School, as a Supreme Court law clerk, and through his extensive trial and appellate experience, Mr. Smith possesses an exceptional ability to see to the core of complicated legal issues. He is a gifted trial and appellate lawyer who distills complex problems into eloquent courtroom advocacy. His writing is powerful and clear. It is no accident that his colleagues in two U.S. Attorney's Offices have trusted him to help solve their most difficult legal challenges.

Remarkably, Mr. Smith pairs his legal brilliance with an equally brilliant ability to relate to everyone he encounters. As a New York City violent crimes prosecutor, Mr. Smith earned the trust of a diverse array of victims, witnesses, law enforcement agents, and defendants by treating everyone with honesty, respect, and compassion. He made countless cases by convincing victims and witnesses, who often came from disadvantaged communities, that he understood their problems and how to solve them. His numerous trial-court accomplishments demonstrate

his ability to connect with jurors from all walks of life. Mr. Smith is soft-spoken yet powerful. He is calm and even-tempered yet passionate. He is humble yet commands respect. As a supervisor and colleague, Mr. Smith's humility was on display when others sought his counsel. Despite his mastery of the law and his experience, Mr. Smith was an excellent listener who was always open to the possibility he was wrong (even if that was rarely the case). He deftly guided others to the right answer while making everyone feel heard.

To his great credit, Mr. Smith has used these skills not to promote himself but to serve others. He has dedicated his legal career to protecting the public, seeking justice for crime victims, and upholding the Rule of Law. Working with him on difficult, emotional cases, we have all witnessed his impeccable judgment, commitment to excellence, and unwavering integrity. Mr. Smith's goal was never to win the case but, in the finest traditions of the U.S. Attorney's Office, to do the right thing. We trusted his judgment because he never put himself first; instead, doing justice was the only thing that mattered.

Mr. Smith's legal skills, calm temperament, respect for others, and commitment to doing the right thing will make him an outstanding District Court Judge.

In the Southern District U.S. Attorney's Office, Mr. Smith inspired his colleagues and those he supervised with his example. He was a credit to the institution, adhering to its highest values at all times. We have no doubt he will do the same as a District Court Judge for the District of Hawaii, and we strongly support his nomination.

Thank you for considering this letter.

Sincerely,

Andrew C. Adams
Robert W. Allen
Andrew Bauer
Jennifer L. Beidel
Martin S. Bell
Jillian B. Berman
Robert L. Boone
Gina Castellano
Jonathan E.W. Cohen
Richard A. Cooper
Shawn G. Crowley
Arlo Devlin-Brown
Edward B. Diskant
Janis Echenberg
Sarah K. Eddy
Amy Ely
Samson A. Enzer
Jordan Estes
Christian R. Everdell
Adam Fee
Jessica Fender
Mike Ferrara
Harris Fischman
Nicole Friedlander
Katherine R. Goldstein
Ilan T. Graff
Kristy J. Greenberg
Nola B. Heller
Timothy Howard
Edward A. Imperatore
Randall Jackson
Brian A. Jacobs
Sidhardha Kamaraju
Robert S. Khuzami
Edward Y. Kim
Joon H. Kim
Elisha J. Kobre
Laurie Korenbaum
Paul M. Krieger
Sarah Krissoff
Michael Kim Krouse
Abigail Kurland
Stephanie Lake
Matthew Laroche
Sharon Cohen Levin
Jessica Lonergan
Michael D. Longyear
Rachel Maimin
Tatiana R. Martins
Jessica A. Masella
Howard S. Master
John M. McEnany
Michael C. McGinnis
Glen G. McGorty
Thomas A. McKay
Nicholas Lloyd McQuaid
Rebecca Mermelstein

Parvin Daphne Moyne	Karin Portlock	Anna Skotko
Rahul Mukhi	Ryan P. Poscablo	Shane T. Stansbury
Joshua A. Naftalis	Lauren Schorr Potter	Audrey Strauss
Kan M. Nawaday	Brendan F. Quigley	Daniel B. Tehrani
Max Nicholas	Seetha Ramachandran	Daniel Tracer
Daniel S. Noble	Rebecca Monck Ricigliano	Niketh Velamoor
Jim Pastore	Anjan Sahni	Hadassa Waxman
Sarah E. Paul	Timothy D. Sini	Richard B. Zabel
Cristy Phillips	Drew Skinner	Douglas S. Zolkind

cc: The Honorable U.S. Senator Mazie K. Hirono
The Honorable U.S. Senator Brian Schatz

The Honorable Richard Durbin, Chair
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

3 October 2023

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Aloha Senators.

I write to express support for the confirmation of Assistant United States Attorney Micah Smith as a Federal Judge for the United States District Court for the District of Hawaii.

Assistant United States Attorney Smith is a respected member of the legal community and is respected by the courts and law enforcement as an incredibly fair advocate for the Government.

He is keenly invested in the safety of the community, maintaining law and order, ensuring the rights of the citizens of Hawaii, and serving his community. AUSA Smith is an outstanding choice as for the court.

As a 30-year law enforcement professional I have served and worked alongside of the Federal Judiciary for virtually my entire career. Having arrived in Hawaii four years ago, I have been able to work closely with the courts and have had an opportunity to work with AUSA Smith.

The Federal Courts are, in many cases, the last stop for citizens seeking justice, and it is vital that they receive fair and impartial treatment in having their cases addressed. ASUA Smith possesses the temperament, fairness, compassion, and respect necessary for the bench.

Micah Smith will be an outstanding addition to the Federal Bench in Hawaii, and I offer my full support and recommendation.

Please feel free to call me at any time if you have any questions or wish to talk.

Most sincerely,

William Jessup

William G. Jessup
Honolulu, HI
240-779-4994

CHAIR
Hon. Ann Claire Williams (Ret.)
acwilliams@jonesday.com
(312) 269-1575

VICE CHAIR
David L. Brown
Dlbrown@hmrlawfirm.com
(515) 244-2141

FIRST CIRCUIT
Kay H. Hodge
khodge@szmllp.com
(617) 542-6789

SECOND CIRCUIT
Dana M. Hrelic
dhrelic@pullcom.com
(860) 424-4382

THIRD CIRCUIT
G. Glennon Troublefield
gtroublefield@carellabyrne.com
(973) 994-1700

FOURTH CIRCUIT
Pamela J. Roberts
Pamela.Roberts@bowmanandbrooke.com
(803) 726-7420

FIFTH CIRCUIT
Michael D. Hunt
Michael.hunt@phelps.com
(225) 346-0285

SIXTH CIRCUIT
Khalilah V. Spencer
kspencer@honigman.com
(313) 465-7654

SEVENTH CIRCUIT
Nigel F. Telman
ntelman@proskauer.com
(312) 962-3548

EIGHTH CIRCUIT
Sonia Miller-Van Oort
Soniamv@sapientialaw.com
(612) 756-7125

NINTH CIRCUIT
John C. Dwyer
dwyerjc@cooley.com
(650) 843-5228

Eric S. Casher
ecasher@meyersnave.com
(510) 808-2000

TENTH CIRCUIT
Jennifer H. Weddle
Weddlej@gtlaw.com
(303) 572-6500

ELEVENTH CIRCUIT
Suzanne E. Gilbert
Suzanne.Gilbert@hklaw.com
(407) 244-1142

D.C. CIRCUIT
Michael L. Huang
mhuang@tpmlaw.com
(734) 678-1531

FEDERAL CIRCUIT
Joseph Michael Drayton
Jdrayton@cooley.com
(212) 479-6000

SPECIAL ADVISORS
Peter Bennett
pbennett@thebennettlawfirm.com
(207) 831-9999

Vincent Chang
vchang@wmd-law.com
(212) 382-3300

Susan Saltzstein
Susan.Saltzstein@skadden.com
(212) 735-4132

STAFF COUNSEL
Denise A. Cardman
Denise.Cardman@Americanbar.org

AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
Hon. Ann Claire Williams (Ret.)
Jones Day
110 North Wacker Drive, Suite 4800
Chicago, Illinois 60606
acwilliams@jonesday.com

October 3, 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 Micah W.J. Smith to the United States District Court for the District of Hawaii

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 Micah W.J. Smith, who has been nominated by the President to the United States District Court for the District of Hawaii. 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. Smith is **"Well Qualified"** to serve on the United States District Court for the District of Hawaii. One committee member recused from voting due to a conflict.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Micah W.J. Smith (*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*)